



Town of Cummington

33 Main Street

P.O. Box 128

Cummington, MA 01026

tel (413) 634-5354 • fax (413) 634-5568



Special Permit Decision/Record

The members of the Cummington Zoning Board of Appeals hereby certify that the following is a record of all the board's proceedings pertaining to the application of Roger Wolf, 154 Nash Road, Cummington, MA for a Special Permit to operate a firewood processing facility on his property located on Stage Road, identified on assessor's map 16 as lot 6 (Hampshire Registry of Deeds, Book 3100, page 198); as provided in Sections 5-20 and 3-30 of the zoning bylaw.

The application to the board is dated 02/20/19, and was received by the ZBA Clerk on 02/26/19. The application is attached as Exhibit 1, and made part of this record.

A notice of public hearing on this special permit, a true copy of which is attached as Exhibit 2, and made part of this record, was:

1. published in the Country Journal, a newspaper of general circulation in Cummington, on March 14th and 21st, 2019, Exhibits 3 & 4 respectively, and;
2. posted on the bulletin boards of the Community House, Post Office, The Old Creamery Grocery, and the town's website at least 14 days before the hearing on April 11, 2019 and;
3. mailed on or before March 14, 2019, postage prepaid, to the applicant, abutters to the property in question, owners of land directly opposite from the property in question on any private or public way, and abutters to abutters whose property is located within 300 feet of the property line of the property in question. The notice was mailed to the names of persons, and to the addresses as provided by the most recent tax list kept by the Board of Assessors in Cummington, with the Assessors certifying such names and addresses, and attached as Exhibit 5, and made part of this record, and;
4. mailed to the Planning Boards of Ashfield, Chesterfield, Goshen, Plainfield, Peru, Windsor, and Worthington.

The public hearing of this special permit application was held on April 11, 2019 at the Community House at 7:00 PM, at which time opportunity was given to all those interested to be heard in favor of, or opposition to, issuance of said special permit. The following members of the board were present: Carla Ness, Chair; Kenneth Howes, Ernest Strong, Mark Bevan, and Eric Smith, Members.

A true copy of the minutes of the hearing is attached as Exhibit 6, and made part of this record.

After the hearing was closed a motion was made, seconded, and approved by a unanimous vote of the five voting members: Ness, Howes, Strong, Bevan, and Smith:

"To grant Roger Wolf a special permit to operate a firewood processing facility on his property located on Stage Road, identified on assessors' map 16, as lot 6, provided the following conditions are met:

- 1. Hours of allowed business operation Monday – Saturday 7:00am – 6:00pm, and;**
- 2. the processor shall not be operated on Sundays, and there shall be no log deliveries prior to 10:00am on Sundays, and;**
- 3. the applicant shall construct a sound barrier using sound absorbent material such as hay, perpendicular to the line of sight between the processor and any residential building within 600 feet of the processor, and;**
- 4. the applicant shall plant an evergreen buffer near the road to help visually obscure the operation, and;**
- 5. any increase in the scale of the operation by adding a larger, or an additional wood processor would require applying for, and being granted a new special permit.**

All Special Permits in Cummington are granted to the Permittee, and do not 'run with the land'."

All Permittees are further reminded that any change or extension of the use and/or, any reconstruction, extension, or structural change beyond what is described in the application or what was expressed at the hearing, would require applying for, and being granted a new special permit.

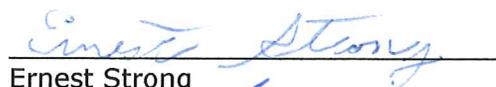
Zoning Board of Appeals



Carla Ness



Kenneth Howes



Ernest Strong



Mark Bevan



Eric Smith



Town of Cummington
 33 Main Street
 P.O. Box 128
 Cummington, MA 01026
 (413) 634-5354 • Fax (413) 634-5568

Zoning Board of Appeals

Application for Special Permit, Variance, or Appeal

Name of Applicant: Roger Wolf

Applicant's Mailing Address: 154 Nash Rd. Cummington, MA.

Location of Property: 0 Stage Rd. MAP 16- Lot 6
 (Street number and name, and Assessors' Map and Lot numbers)

Applicant is _____ (Owner, tenant, licensee, prospective buyer, etc.)

Applicable section(s) of the Zoning By-law: secto. 5-20 (USEREG) 3-30 (Special Permits)

(It is very important that you cite all applicable sections of the Zoning By-law from which you are seeking relief. At the hearing the ZBA can only decide on matters that were included in the published/posted Public Notice of the hearing. The reasoning being that the public has the right to offer input on any given matter and be present at the hearing, but if they weren't accurately informed as to the nature of the hearing, how could they know whether or not to participate?)

Date of denial or Notice of Violation (if applicable) by the Building Inspector, Planning Board, etc. _____ (Please include a photocopy of denial or Notice of Violation.)

Please describe the nature of your request: (If necessary, use the back of this page, or attach a page to it.)

I request a hearing before the Zoning Board of Appeals in regard to the matter stated above.

Applicant's Signature: Roger Wolf Date: 2/20/19

ZBA Chair or Clerk's Signature: [Signature] Date: 2-26-19

Received from Applicant, the amount of **\$100.00** to apply toward advertising costs and expenses.
 Town Clerk's Signature: _____ Date: _____
 The Town Clerk cannot accept this application until after the ZBA Chair or Clerk has signed in the box above.

0 Stage Road. Map 16, lot 6

January 12, 2019

Zoning Board of Appeals
33 Main Street
P.O. Box 128
Cummington, MA 01026

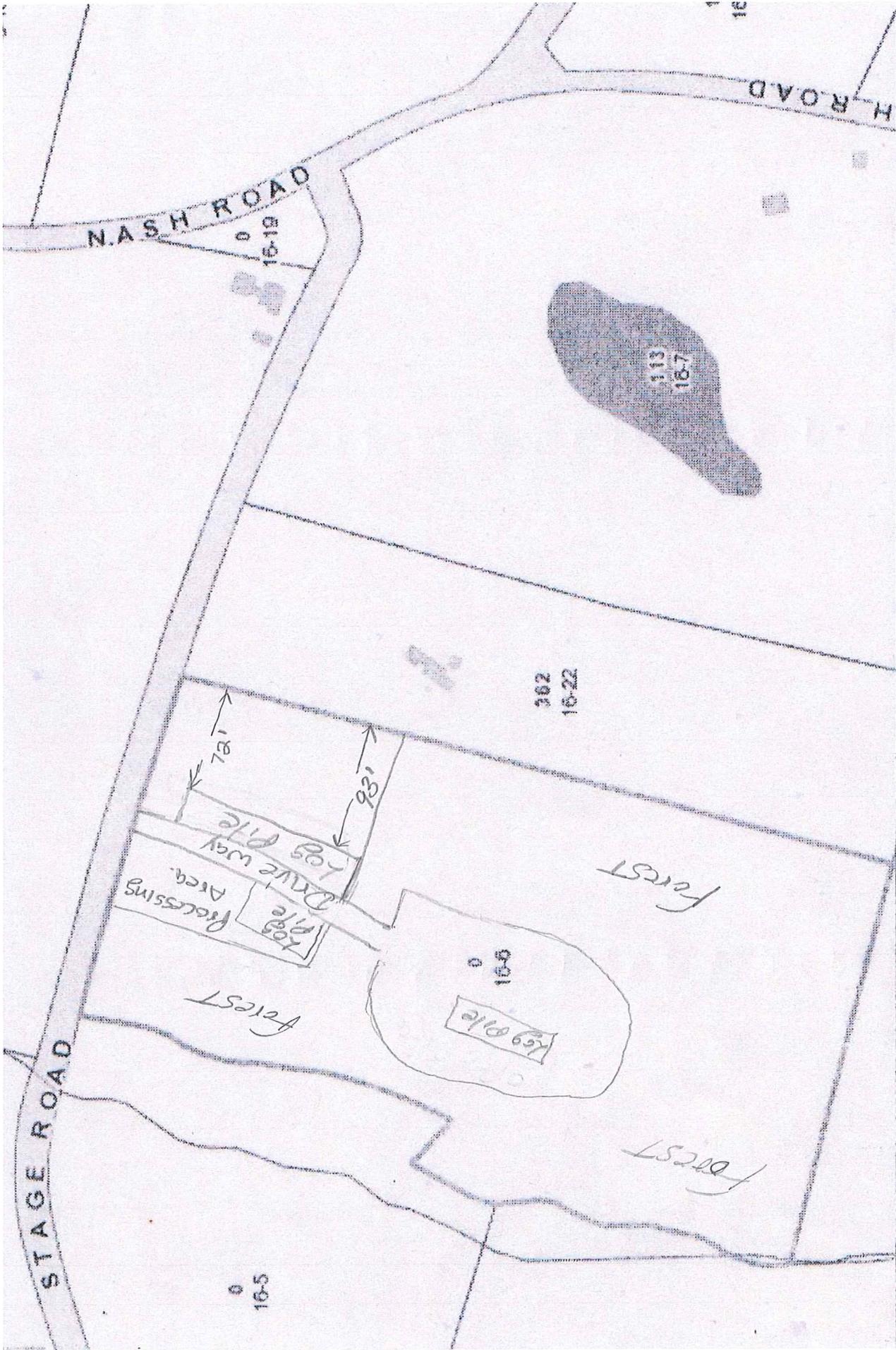
History

- Lot first utilized for firewood production in 1999
 - Logs have historically been and are currently sourced from outside locations
- Location of processing site
 - 155 yards from Meadow Brook
 - 33 yards from Stage Road
 - 43 yards from property line of 362 Stage Road
- On-season operation runs from mid April-late November
 - Between 250 and 300 hours of run time on processor annually
 - 207 hours from May-November 2018
 - General Hours of operation: M-F, 8AM-6PM with occasional maintenance work performed on weekends in addition to weekend hours outlined below
 - Customer needs
 - Weekend delivery of pre-processed, seasoned firewood necessary in order to meet customer scheduling
 - Hours of operation on weekends: varying, 4 hours per day as needed, August-November between 10AM and 4PM
 - Incoming log deliveries
 - May 2018-November 2018: 25 deliveries
 - Avg time to complete delivery process is 30-40 min.
 - Typical delivery time is Sunday AM with occasional PM drop offs
 - All deliveries provided by licensed logger engaging in agricultural activity as per MA law. No restrictions on Sunday trucking.
- Lot use from December-April (off-season use)
 - Loading truck by hand with small orders (approx 1 cord) of pre processed firewood on “as needed” basis
 - Harvesting of Hemlock logs grown on site (approx. 2 log truck loads annually)
 - Incoming log deliveries
 - December 2017-April 2018: 17 deliveries

Future Expectations

- Current production is at maximum physical capacity and will not be expanded

In summary, small businesses are the root of our rural economy and the firewood processing business located on Stage Road is beneficial to many different parties. Landowners looking to profit off of their low-grade trees have a market here in addition to the local loggers and foresters that provide a raw product. All fuels used at this location are sourced from small businesses in the area. Any repairs or maintenance necessary is performed by local mechanics and new machines are locally sourced from fellow small business owners. Even the town of Cummington, who collects an annual equipment tax, is benefitted by this venture. It is my hope that I will be able to continue to offer a clean, renewable form of alternative heating to the hill town communities.



of Cummington, Massachusetts

Parcel: 0 STAGE RD ID: 16-6

10/2018 from <http://www.mainstreetmaps.com/ma/cummington/public.asp>



NOT TO SCALE

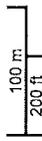




Town of Cummington, Massachusetts

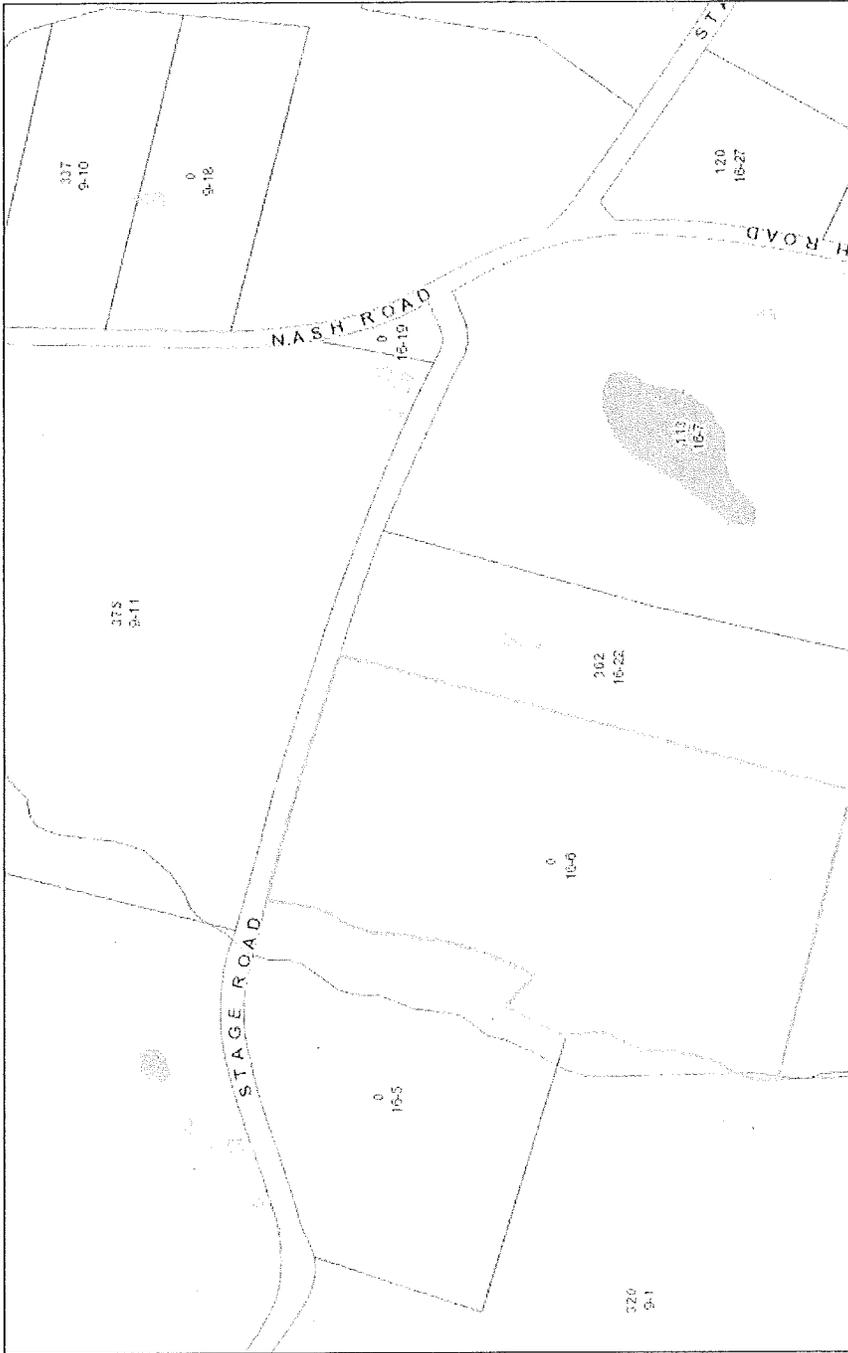
Selected Parcel: 0 STAGE RD ID: 16-6

Printed 12/10/2018 from <http://www.mainstreetmaps.com/ma/cummington/public.asp>



MainStreetGIS
MainStreetGIS, LLC
www.mainstreetgis.com

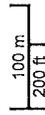
This map is for informational purposes only, it is not for appraisal of, or conveyance of land. The Town of Cummington, Massachusetts and MainStreetGIS, LLC assume no legal responsibility for the information contained herein.



Town of Cummington, Massachusetts

Selected Parcel: 0 STAGE RD ID: 16-6

Printed 12/10/2018 from <http://www.mainstreetmaps.com/main/cummington/public.asp>



This map is for informational purposes only. It is not for appraisal of, description of, or conveyance of land. The Town of Cummington, Massachusetts and MainStreetGIS, LLC assume no legal responsibility for the information contained herein.



Town of Cummington

33 Main Street

P.O. Box 128

Cummington, MA 01026

(413) 634-5354 • Fax (413) 634-5568

Zoning Board of Appeals Public Hearing Notice

In accordance with the provisions of M.G.L. Ch. 40A, § 11, the Cummington Zoning Board of Appeals will hold a public hearing at the Community House, 33 Main Street, on **Thursday, April 11, 2019**, starting at **7:00 PM**, to consider the application of Roger Wolf, 154 Nash Road, Cummington, MA for a Special Permit to operate a firewood processing facility on his property located on Stage Road, identified on assessor's map 16 as lot 6; as provided in Sections 5-20 and 3-30 of the zoning bylaw.

A copy of this application is available on the select board's table in the Community House.

Any person interested or wishing to be heard on these matters should appear at the above-designated time and place.

Michael Holden, Clerk
Cummington Zoning Board of Appeals

Classifieds

14 WEEKLY NEWSPAPERS | SERVING 50 LOCAL COMMUNITIES

A TURLEY PUBLICATION | www.turley.com

COMMUNITY MARKETPLACE

Call us toll free 800.824.6548

REAL ESTATE
FOR RENT



EQUAL HOUSING OPPORTUNITY

ALL REAL ESTATE advertised herein is subject to the Federal Fair Housing Act, which makes it illegal to advertise "any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or intention to make any such preference, limitation, or discrimination." We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis.

Classified Advertising DEADLINES

QUABBIN & SUBURBAN FRIDAY AT NOON

HILLTOWNS MONDAY AT NOON

\$12.50 Each Digital Photos

TURLEY PUBLICATIONS, INC.

Purchase a photo that recently ran in one of our publications. Go to newspapers.turley.com/photo-request

REAL ESTATE
VACATION RENTALS

WARM WEATHER IS Year Round in Aruba. The water is safe, and the dining is fantastic. Walk out to the beach. 3 Bedroom weeks available. Sleeps 8. Email: carolann@aol.com for more information.

FOR RENT



All real estate advertising in this newspaper is subject to the Federal Fair Housing Act of 1968, which makes it illegal to advertise any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, number of children and or pregnancy, national origin, ancestry, age, marital status, or any intention to make any such preference, limitation or discrimination.

This newspaper will not knowingly accept any advertising for real estate that is in violation of the law. Our readers are hereby informed that all dwellings advertised in this newspaper are available on an equal opportunity basis. To complete about discrimination call The Department of Housing and Urban Development - HUD toll-free at 1-800-859-9777. For the U.S. area, call HUD at 817-855-5500. The toll free number for the hearing impaired is 1-800-927-9275.

2019 TAX TIME

Kitchen Table Taxes
Personal & Small Business Tax Returns
"David The Tax Man"

Tel: 413-289-0058
Fax: 413-324-2167

Credit Cards Welcome
kitchentabletaxes@gmail.com

David E. Whitney
Enrolled Agent
Sixty-Five Jim Ash Road
Palmer, MA 01069-9814
www.kitchentabletaxes.com

CHANTEL BLEAU ACCOUNTING SERVICES
For Full Accounting & Tax Service
Registered Tax Return Preparer

228 West St., Ware, MA 01082
413-967-8364

Call For An Appointment

The IRS does not endorse any particular individual tax return preparer. For more information on tax preparers go to irs.gov.

Income Tax Preparation
~ 31 years tax experience ~

Bruce J. Charwick

62 Jim Ash Road
Palmer, MA 01069
(413) 283-5596

AJE FINANCIAL SERVICES

588 Center Street
Ludlow, MA 01056
www.ajefinancial.com
(413) 589-1671

Tax Return Stressing You Out? WE CAN HELP!
Make your appointment today; let us worry about it for you!

- FREE Direct Deposit • FREE Electronic Filing
- Evening & Saturday Hours Available
- Drop-Off Services • Personal & Business Tax Preparation

Personal & Small Business Federal & All States

FAST TAX USA
TAX PREPARATION SERVICE
413 324-2135

IRS Certified Tax Preparers
1622 North Main Street
Palmer, MA 01069
Fasttax@charternet.net
Free E-File & Direct Deposit

\$50 OFF
Reg. Prices
To All New Clients

Melchiori Tax and Financial Services

IRS Problems?
Let a Professional Handle It for you.
Call us anytime!

Complete Tax Services:
Personal, Business, Corporations and Partnerships

Telephone (413) 786-8727 • Fax (413) 786-1833
betty@melchioritax.com • paoline@melchioritax.com

24 Southwick Street, Feeding Hills, MA 01030

CALL YOUR LOCAL TURLEY PUBLICATIONS SALES REPRESENTATIVE FOR INFORMATION AND RATES ON ADVERTISING YOUR TAX SERVICE HERE!
413-283-8393 • 1-800-824-6548

PUBLIC NOTICES

Mortgagee's Sale of Real Estate

By virtue and in execution of the Power of Sale contained in a certain mortgage given by **Jeremy Ziellinski, to C AND B PROPERTY CORP.**, dated November 28, 2012 and recorded at the Hampshire County Registry of Deeds in Book 11136, Page 183 of which mortgage the undersigned is the present holder for breach of the conditions of said mortgage and for the purpose of foreclosing, the same will be sold at Public Auction at eleven o'clock, A.M. on the 4th day of April, A.D. 2019, on the mortgaged premises described below, being known as 5 East Main Street, Hampshire County all and singular the premises described in said mortgage, to wit:

Beginning at a stake and stone on the southerly side of the Highway leading from the Railroad

Station to Norwich B ridge so-called, (said highway being known as Main Street) at the corner of land now or formerly of Jabez Stanton and about twenty (20) rods

East of the Railroad tract, thence

SOUTHERLY ten (10) rods, eight (8) feet to a stake and stones; thence

EASTERLY six (6) rods; thence

NORTHERLY ten (10) rods to the highway; thence

WESTERLY on said highway, eight (8) rods and six (6) feet to the first mentioned bounded.

Excepting so much of the above described premises as is described as follows: a strip of land containing about one hundred twenty (120) square feet and comprising Taking No. 1 in Grade Crossing Elimination Plan of the Commonwealth of Massachusetts recorded in Hampshire County Registry of Deeds in Book of Plans 20, Page 62 to 71, said strip is bounded as follows:

NORTHERLY by Main Street, about sixty-one (61) feet; **WESTERLY** by land of Frank Thebedo about six (6) feet; **SOUTHERLY** by remaining land, sixty (60) feet.

Subject to License Agreement dated December 11, 1963 between the

Town of Huntington, Massachusetts and Tenecco Oil Company recorded in Hampshire County Registry of Deeds in Book 1430, Page 159, if still in force and applicable.

Being the same premises conveyed to C and B Property Corp. by deed of Gallagher's Olde Fashioned Service, Inc. dated November 22, 1998, recorded in Hampshire County Registry of Deeds in Book 5147, Page 302.

The mortgagee reserves the right to postpone the sale to a later date by public proclamation at the time and date appointed for the sale and to further postpone at any adjourned sale date by public proclamation at the time and date appointed for the adjourned sale date.

Said premises will be sold subject to and with the benefit of all restrictions, easements, improvements, outstanding tax titles, mortgages, liens, rights of tenants and parties in possession, unpaid taxes, municipal liens and other public taxes, assessments or liens, having priority over the mortgage

described herein, if any.

In the event that the successful bidder at the foreclosure sale shall default in purchasing the within described property according to the terms of this Notice of Sale and/or the terms of the Memorandum of Sale executed at the time of the foreclosure, the Mortgagee reserves the right to sell the property by Foreclosure Deed to the second highest bidder provided that the second highest bidder shall deposit with Mortgagee's attorneys, The law office of Raipher, P.C., the amount of the required deposit as set forth herein within three (3) business days after written notice of default of the previous highest bidder and title shall be conveyed to said second highest bidder within thirty (30) days of said written notice, or any required approval by the land court.

TERMS OF SALE: Five Thousand Dollars (\$5,000) will be required to be paid in cash or by certified check at the time and place of sale as earnest money. The balance is to be paid in cash or by certified check within thir-

ty (30) days of the date of the sale and shall be deposited in escrow with the firm of Raipher, P.C. at 265 State Street, Springfield, MA pending any required approval of said sale by the land court. The Deed shall be delivered within ten (10) days from the date of approval of said sale by the land court.

AMP Investments, LLC
Present holder of said mortgage.

By their attorney,
V. Van Johnson III,
Raipher, P.C.
265 State Street
Springfield, MA 01103
Tel. (413) 746-4400
3/14, 3/21, 3/28/19

Cumington ZBA Hearing Public Notice

In accordance with the provisions of M.G.L. Ch. 40A, 11, the Cumington Zoning Board of Appeals will hold a public hearing at the Community House, 33 Main Street, on **Thursday, April 11, 2019, starting at 7:00 PM**, to consider the application of Roger Wolf, 154 Nash Road, Cumington, MA for a Special Permit to operate a firewood processing facility

on his property located on Stage Road, identified on assessor's map 18 as lot 6; as provided in Sections 5-20 and 9-30 of the zoning bylaw.

A copy of this application is available on the select board's table in the Community House.

Any person interested or wishing to be heard on these matters should appear at the above-designated time and place.

Michael Holden, Clerk
Cumington Zoning Board of Appeals
3/14, 3/21/19

TOWN OF HUNTINGTON
Public Forum to Consider the Purchase of the Former St. Thomas Church Property
Wednesday, March 27, 2019
6:00 p.m.

Stanton Hall, 26 Russell Road, Huntington, MA 01050

AGENDA

- I. Call meeting to order, welcome, and introduction
- II. Discussion Public Opinion
- III. Questions and Answers

Adjournment
3/14, 3/21/19

WE'VE EXPANDED OUR WEB SITE

PUBLIC NOTICES ARE NOW ONLINE

- 1 Email all notices to notices@turley.com
- 2 Access archives and digital tear sheets by newspaper title.
- 3 Find a quick link to the state of Massachusetts' public notice web site to search all notices in Massachusetts newspapers.

Public notice deadlines are Mondays at noon, Fridays noon for Monday holidays.

visit www.publicnotices.turley.com

OBITUARY

Lillian K. Wilander, 86

WORTHINGTON — Lillian Katherine "Lil" (Hildack) Wilander, 86, passed away peacefully on Monday, March 11, in the presence of family.

She was born Nov. 29, 1932, to the late Albert and Sophie (Warga) Hildack and raised in Westfield. She met her husband the late William R. Wilander of Chester and they married on April 28, 1951, in Westfield at St. Mary's. She and her husband had four daughters who were her passion for life and love.

Lillian was always a strong, independent woman who was full of spice and a good sense of humor. She was a kind, warm, loving woman with a heart of gold. She was a hard worker and had many different jobs. One of her favorites was as a department manager at Albert Steiger's in Westfield. She was also an animal lover and donated to the National Wildlife Federation, as well as endangered species of wolves and various animals.

Lillian is survived by her four daughters, Susan Mineau of Westfield, Pamela Baker and husband Kenneth of Middlefield, Nancy O'Melia and husband Paul of East Longmeadow, and daughter Paula Baker of Elmira, N.Y. She leaves behind her beloved companion, her German shepherd named Cocoa. She also

leaves behind 10 grandchildren; 14 great-grandchildren; nieces and nephews; a very special niece, Lisa Medeiros from Westfield; and her sister and brother-in-law Gail and Tommy Smith of Westfield. Lillian was preceded in death by her sister Helen Yaple, and brothers Edward and baby brother Charlie Hildack of Westfield; her grandson William Baker; great-grandson Patrick Gallagher; sons-in-law Paul Mineau and Wayne Baker; as well as nieces and nephews. She will join her beloved dog, Larson.

Her family thanks all the staff at Cooley Dickinson Hospital for the respectful and compassionate care Lillian and her family received during her stay.

Her funeral was held March 18 at St. Mary's Catholic Church in Westfield. Arrangements were by Firtion-Adams Funeral Home, Westfield. Burial will be held in the spring.

If one wishes, donations can be made to Second Chance Community Veterinary Hospital, 67 Mulberry St., Springfield, MA; Dana-Farber Cancer Institute, 450 Brookline Ave., Boston, MA 02215; or Shiners Hospital for Children, 516 Carew St., Springfield, MA 01104. Firtionadams.com

DEATH NOTICE

WILANDER, LILLIAN K.

Died March 11
Funeral March 18
St. Mary's Catholic Church
Westfield

OBITUARY POLICY

Turley Publications offers two types of obituaries.

One is a free, brief **Death Notice** listing the name of deceased, date of death and funeral date and place.

The other is a **Paid Obituary**, costing \$100, which allows families to publish extended death notice information of their own choice and may include a photograph. **Death Notices & Paid Obituaries** should be submitted through a funeral home to: obits@turley.com.

Exceptions will be made only when the family provides a death certificate and must be pre-paid.

COUNTRYJOURNAL@TURLEY.COM

PUBLIC NOTICES

TRIAL COURT OF MASSACHUSETTS THE SUPERIOR COURT HAMPSHIRE SUPERIOR COURT

15 Gothic Street
P.O. Box 1119
Northampton, MA 01060
DOCKET NUMBER 19cv041

Florence Bank 1/a/a Florence Savings Bank vs Stanley J. Bandoski, III ORDER OF NOTICE BY PUBLICATION

TO: Stanley J. Bandoski, III, all in said Commonwealth; and to all persons entitled to the benefit of the Servicemembers Civil Relief Act, 50 U.S.C. App. §501 at seq.; Florence Bank 1/a/a Florence Savings Bank, 85 Main Street, Florence, MA 01062 claiming to have an interest in a Mortgage covering real property in Middlefield, Hampshire County, Massachusetts 01243 known as 58 Chester Road given by Stanley J. Bandoski, III to Florence Bank 1/a/a Florence Savings Bank dated 2/24/2005, and recorded in Hampshire County District Registry of Deeds, in Book 8175, Page 142 has/ have filed with this court a Complaint for determination of Defendant's/Defendants' Servicemember status.

If you now are, or recently have been, in active military service of the United States of America, then you may be entitled to the benefits of the Servicemembers Civil Relief Act. If you object to a foreclosure of the above-mentioned property on that basis, then you or your attorney must file a written appearance and answer in this court at Northampton Hampshire County on or before 05/06/2019 or you may be forever barred from claiming that you are entitled to benefits of said Act.

Witness, Judith Fabricant, Esquire, Chief Justice of the Superior Court, at Northampton,

Massachusetts, this 4th day of March, 2019.

Harry Jekanowski, Jr.
Clerk of Courts

3/21/19

Legal Advertisement Town of Chester Solar Photovoltaic Installation Project

The Town of Chester invites sealed Bids for the Solar Photovoltaic Installation Project. The project includes the design and installation of photovoltaic systems on three town-owned buildings; the town's Water Treatment Plant, Highway Garage, and Fire Station #1. Contractor will provide turnkey procurement and installation of three separate arrays ranging from 4 to 20KW in conjunction with the Chester Municipal Electric Light Department. All work must be completed by May 31, 2019.

This project is being administered by the Pioneer Valley Planning Commission (PVPC) and funded by a grant from the Commonwealth of Massachusetts Department of Energy Resources, Green Communities Program. The estimated construction cost for this project is approximately \$106,000.

Contract documents will be available electronically beginning March 27, 2019 from 9:00 AM to 4:00 PM through the Pioneer Valley Planning Commission (PVPC), 60 Congress Street, 1st Floor, Springfield, MA 01104, phone: 413-781-6045. Electronic copies may be obtained by contacting Mary Mazk at mmazk@pvpc.org.

Bids shall be accompanied by a bid deposit in the amount of 5% of the greatest possible bid amount, considering all alternatives and made payable to Town of Chester.

All bids for this project are subject to the provisions and minimum wage rates as required by M.G.L. c.30, §39M as amended, and M.G.L. c.149, §26 to 27H, inclusive.

Bids may be changed or withdrawn prior to the bid opening, but not within the

sixty (60) days subsequent to the bid opening, by submission of such a change in writing in a sealed envelope, identifying the submitting party and indicating that it contains a correction of the bid for the Solar Photovoltaic Installation Project.

The lowest qualified responsible bidder shall be awarded the contract subject to availability of funds under the grant program. The Town of Chester may cancel this invitation for bid (IFB), in whole or in part, at any time that such an act is deemed in its best interest, reserves the right to waive any informality in the bidding or to reject any and all bids in total or in part as may be deemed to serve the best interest of the Town, and will not be responsible for any costs incurred by a bidder in preparing and submitting a bid in response to this IFB.

All questions regarding this project should be directed to Erica Johnson at the PVPC, 413-781-6045 or ejohnson@pvpc.org. Contract documents may be viewed at the PVPC, 60 Congress Street, 1st Floor, Springfield, MA 01104 or Chester Town Hall, Town Administrator's Office, 15 Middlefield Road, Chester, MA 01011 Monday Wednesday from 9:00 - 1:00 PM.

A pre-bid meeting will take place on Tuesday April 9th at 11:00 AM. The Meeting will start at Fire Station #1, 300 State Route 20. From there, the meeting will move to the Highway Garage, 2 Town Road, and finally the Water Treatment Plant, located on Reservoir Road.

Bids must be received at the office of the Pioneer Valley Planning Commission no later than 2:00 PM on Tuesday, April 16, 2019. Bids will be opened and read at that time. 3/21/19

Cumington ZBA Hearing Public Notice

In accordance with the provisions of M.G.L. Ch. 40A, § 11, the Cumington Zoning Board of Appeals will hold a public hearing at the Community House, 33 Main Street, on Thursday, April 11, 2019,

starting at 7:00 PM, to consider the application of Roger Wolf, 154 Nash Road, Cummington, MA for a Special Permit to operate a firewood processing facility on his property located on Stage Road, identified on assessor's map 16 as lot 6; as provided in Sections 5-20 and 3-30 of the zoning bylaw.

A copy of this application is available on the select board's table in the Community House. Any person interested or wishing to be heard on these matters should appear at the above-designated time and place.

Michael Holden, Clerk
Cummington Zoning Board of Appeals
3/14, 3/21/19

TOWN OF HUNTINGTON Public Forum to Consider the Purchase of the Former St. Thomas Church Property

Wednesday, March 27, 2019 6:00 p.m.
Stanton Hall,
26 Russell Road, Huntington, MA 01050

AGENDA
I. Call meeting to order, welcome, and introduction
II. Discussion - Public Opinion

III. Questions and Answers
Adjournment
3/14, 3/21/19

Mortgagee's Sale of Real Estate

By virtue and in execution of the Power of Sale contained in a certain mortgage given by Jeremy Zdelinski, to C AND B PROPERTY CORP., dated November 28, 2012 and recorded at the Hampshire County Registry of Deeds in Book 11136, Page 183 of which mortgage the undersigned is the present holder for breach of the conditions of said mortgage and for the purpose of foreclosing, the same will be sold at Public Auction at eleven o'clock, A.M. on the 4th day of April, A.D. 2019, on the mortgaged premises described below, being known as 5 East Main Street, Hampshire County all and singular the premises described in said mortgage, to wit:

Beginning at a stake and stone on the southerly side of the Highway leading from the Railroad

Station to Norwich B ridge so-called, (said highway being known as Main Street) at the corner of land now or formerly of Jabez Stanton and about twenty (20) rods East of the Railroad tract, thence

SOUTHERLY ten (10) rods, eight (8) feet to a stake and stone; thence

EASTERLY six (6) rods; thence

NORTHERLY ten (10) rods to the highway; thence

WESTERLY on said highway, eight (8) rods and six (6) feet to the first mentioned bounded.

Excepting so much of the above described premises as is described as follows: a strip of land containing about one hundred twenty (120) square feet and comprising Taking No. 1 in Grade Crossing Elimination Plan of the Commonwealth of Massachusetts recorded in Hampshire County Registry of Deeds in Book of Plans 20, Page 62 to 71, said strip is bounded as follows:

NORTHERLY by Main Street, about sixty-one (61) feet; WESTERLY by land of Frank Thebedo about six (6) feet; SOUTHERLY by remaining land, sixty (60) feet.

Subject to License Agreement dated December 11, 1963 between the Town of Huntington, Massachusetts and Temasco Oil Company recorded in Hampshire County Registry of Deeds in Book 1430, Page 159, if still in force and applicable.

Being the same premises conveyed to C and B Property Corp. by deed of Gallagher's Olde Fashioned Service, Inc. dated November 27, 1996, recorded in Hampshire County Registry of Deeds in Book 5147, Page 302.

The mortgagee reserves the right to postpone the sale to a later date by public proclamation at the time and date appointed for the sale and to further postpone at any adjourned sale date by public proclamation at the time and date

appointed for the adjourned sale date.

Said premises will be sold subject to and with the benefit of all restrictions, easements, improvements, outstanding tax titles, mortgages, liens, rights of tenants and parties in possession, unpaid taxes, municipal liens and other public taxes, assessments or liens, having priority over the mortgage described herein, if any.

In the event that the successful bidder at the foreclosure sale shall default in purchasing the within described property according to the terms of this Notice of Sale and/or the terms of the Memorandum of Sale executed at the time of the foreclosure, the Mortgagee reserves the right to sell the property by Foreclosure Deed to the second highest bidder provided that the second highest bidder shall deposit with Mortgagee's attorneys, The law office of Raipher, P.C., the amount of the required deposit as set forth herein within three (3) business days after written notice of default of the previous highest bidder and title shall be conveyed to said second highest bidder within thirty (30) days of said written notice, or any required approval by the land court.

TERMS OF SALE: Five Thousand Dollars (\$5,000) will be required to be paid in cash or by certified check at the time and place of sale as earnest money. The balance is to be paid in cash or by certified check within thirty (30) days of the date of the sale and shall be deposited in escrow with the firm of Raipher, P.C. at 265 State Street, Springfield, MA pending any required approval of said sale by the land court. The Deed shall be delivered within ten (10) days from the date of approval of said sale by the land court.

AMP Investments, LLC
Present holder of said mortgage.

By their attorney,
V. Van Johnson III,
Raipher, P.C.
265 State Street
Springfield, MA 01103
Tel. (413) 746-4400

3/14, 3/21, 3/28/19

WE'VE EXPANDED OUR WEB SITE

PUBLIC NOTICES ARE NOW ONLINE

- 1 Email all notices to notices@turley.com
- 2 Access archives and digital tear sheets by newspaper title.
- 3 Find a quick link to the state of Massachusetts' public notice web site to search all notices in Massachusetts newspapers.

Public notice deadlines are Mondays at noon, Fridays noon for Monday holidays.

visit www.publicnotices.turley.com



TOWN OF CUMMINGTON

www.cummington-ma.gov

Board of Assessors

33 Main St, P.O. Box 74

Cummington, MA 01026

413-200-5010

boa@cummington-ma.gov

February 25, 2019

List of abutters for 0 Stage Rd, map 16, lot 6 - 300' buffer distance

Map 9, Lot 1 320 Stage Rd	Mark Sullivan, PO Box 178, Cummington, MA 01026
Map 9, Lot 10 337 Stage Rd	Peter & Beth Lang, 337 Stage Rd, Cummington, MA 01026
Map 9, Lot 11 375 Stage Rd	Ronald Wolf, PO Box 2, Cummington, MA 01026
Map 16, Lot 5 0 Stage Rd	Peter & Beth Lang, 337 Stage Rd, Cummington, MA 01026
Map 16, Lot 7 113 Nash Rd	Paul Carman, PO Box 812365, Boca Raton, FL 33481
Map 16, Lot 8 85 Nash Rd	Charlene Madison Cassidy & John Cassidy 85 Nash Rd, Cummington, MA 01026
Map 16, Lot 22 362 Stage Rd	Gregory & Karen Tonelli, 362 Stage Rd, Cummington, MA 01026

Sincerely,

Joy Johns
Assessor/Clerk



Town of Cummington

33 Main Street

P.O. Box 128

Cummington, MA 01026

(413) 634-5354 • Fax (413) 634-5568

Zoning Board of Appeals

Exhibit 6 - Minutes of the Roger Wolf hearing on 04/11/19

The hearing was called to order at 7:06pm by Zoning Board of Appeals (ZBA) Chair, Carla Ness.

Additional ZBA members in attendance were Kenneth Howes, Ernest Strong, Mark Bevan, Members; and Eric Smith, Alternate Member.

The chair read the meeting notice that ran in the Country Journal on 03/14/19 and 03/21/19 as follows:

"In accordance with the provisions of M.G.L. Ch. 40A, § 11, the Cummington Zoning Board of Appeals will hold a public hearing at the Community House, 33 Main Street, on Thursday, April 11, 2019, starting at 7:00 PM, to consider the application of Roger Wolf, 154 Nash Road, Cummington, MA for a Special Permit to operate a firewood processing facility on his property located on Stage Road, identified on assessor's map 16 as lot 6; as provided in Sections 5-20 and 3-30 of the zoning bylaw.

A copy of this application is available on the select board's table in the Community House.

Any person interested or wishing to be heard on these matters should appear at the above-designated time and place."

Also in attendance was the applicant Roger Wolf. Abutters Karen and Greg Tonelli were present accompanied by their attorney Michael Pill of Green Miles Lipton, LLP. Cummington residents, Charlene Madison, Corinne Sharkey, Laura and Mark Sullivan, Cheryl Major, and Lance Wolf. Additionally, Massachusetts residents Sylvia Lapinski, Charlene Bairdi, Justin Crawford, Kim Summerville, Tom Brule, and Bobby Dodge were present. Documents from abutters, Cummington residents and Green Miles Lipton, LLP (GML) were distributed as the meeting began.

- ZBA chair Ness read Roger Wolf's Special Permit Application.
- Eric Smith stated that he wished to dispel any appearance of conflict of interest affirming that although he is an abutter to the applicants home he is

not an abutter to the parcel in question; and that he has no interest of any kind in the business; and will remain fair, impartial, and objective regarding the matter at hand.

- Roger Wolf gave a brief description of his firewood processing business, including data from his application on operating hours, processor runtime meter readings and distances to property lines. He also answered questions about the particulars of his operation.
- Laura Sullivan asked about why a Special Permit was not issued in the past. ZBA chair Ness answered that it could have been as a result of oversight, resident not aware of the requirements or believe that it was a home business and not required.
- Michael Pill of GML brought up several points from his letter to the ZBA on the behalf of the abutters.
- Karen Tonelli stated that the constant noise from Wolfs processing plant has become an annoyance and they tried to work with Wolf to lessen the problem to no avail. She stated that they took this action "as a last resort".
- Eric Smith of ZBA looked at the engine run time data from the diesel processor supplied by the applicant (207 hrs.) and divided it by the estimated number of weeks (28) of operations between May and November 2018 and determined that the processor would have operated an average of 7.4 hours per week during that period.
- Several customers and friends spoke in support of Wolf and his business.
- Madison read two letters in opposition, one by Paul Carman of Nash Rd and one in which she authored. Both were submitted for the record.
- Charlene Baiardi of Chesterfield asked about the difference between processing logs from a different lot and processing maple sugar sap from different lots.
- Tom Brule, a forester hired by Wolf, stated that he is developing a forestry plan for the processor lot that would harvest the 25% required for a silviculture exemption.
- Bevan motioned to continue the hearing until April 18th. It was seconded by Strong and unanimously approved.
- Ness distributed training materials she obtained from a recent conference she attended in Worcester presented by The Citizen Planner Training Collaborative.
- At 8:20 Ness made a motion to close, seconded and unanimously approved.

Hearing continues on 04/18/19

This was a continuance of a special permit application hearing begun on April 11, 2019. A public notice for this hearing continuation was posted in the Community House. The hearing was called to order at 7:02 pm by the ZBA Chair Carla Ness. In attendance were ZBA members, Ernest Strong, Kenneth Howes, Mark Bevan and Eric Smith. Also in attendance were the applicant Roger Wolf, abutters Karen & Greg Tonelli and abutter Charlene Madison. Cummington residents, Corinne Sharkey, Mark Sullivan, Cheryl Major, Lance Wolf, Shane Wolf, Katie Noel, Lauren Skowronek and Dalton Noel also attended. Additionally, Massachusetts residents Charlene Bairdi, Jennie Wolf, and Kim Summerville were present. Documents from abutters and other Cummington residents were distributed at the meeting began.

- ZBA chair Ness stated that this was a continuance of the hearing begun on April 11, 2019 for the consideration of a Special Permit application by Roger Wolf for a wood processing area on assessor's map 16 lot 6. Additionally she reminded the audience that the public comment period was still open.
- K. Tonelli requested that she be allowed to record the meeting and that permission was granted. She was reminded that if this process continued into litigation that the tape may be requested by legal representatives of those involved in the case.
- Major asked if Wolf's request could be grandfathered as a non-conforming site being that the current version by-laws were not written prior to the commencement of wood processing by the applicant. The town clerk provided the zoning by laws that were in effect in 1999; they were reviewed by the ZBA and it was found that the section applicable to this application had not changed.
- Major also read a letter she penned to the ZBA and offered it to the board for inclusion in the record. She also submitted sections of the Massachusetts General Laws Chapter 40A:5 through Chapter 40A:7 to rebut claims made in the opposition letter dated April 13, 2019 submitted by Michael Pill of Green Miles Lipton, LLP (GML) on the behalf of the Tonelli's.
- The applicant submitted a photograph of the wood processors run time meter. It was purchased new in 2015 and read 908.6 hours.
- Sharkey spoke to environmental gentrification and that Cummington is an agricultural community in which silvaculture (and the sound created by this process) is part of the fabric of the town.
- Madison read a second opposition letter that she wrote and submitted it for the record to the ZBA

- Several customers and friends spoke in support of Wolf and his business.
- Paul Carman part time resident of Nash Rd called in on the phone and again voiced his opposition to the "all day and every day noise" generated by the applicants operation.
- Karen Tonelli stated that the average of 7.4 hours per week (that the ZBA derived from 207 hours divided by the estimated number of weeks (28) of operations between May and November 2018) was misleading because the applicant does not operate during inclement weather which causes more hours of operation during nice weather.
- Ness asked the applicant if he could get his logs delivered after 10 on Sunday and additionally refrain from starting his processor on Sundays. Wolf stated he was open to that idea as a compromise.
- Major objected to the idea of limiting Sunday operations as it could set a precedent.
- Karen Tonelli asked if the ZBA if the applicant could move his operation to another location. Wolf stated that it would not be practical.
- A document in support of the applicant was signed by 13 individuals and given to the board for inclusion in the hearing records.
- At 7:50pm Ness made a motion to close the public comment period. It was seconded and unanimously approved.
- Bevan stated that he was a systems engineer and not an acoustical engineer. He presented a four page general description of decibels (dB) and how the rule of inverse squares demonstrates how distance from a noise source lowers dB levels. The distance from the center of the wood processor to the center of the Tonelli's residence is 527 ft. Bevan used this distance as well as 110 dB @ 1m of a chain saw sound level to calculate the expected dB drop would be ~45dB. These were only estimates for demonstration as there are no actual sound level measurements available for the processor and additionally would not take in account the nearly 200 feet of sound buffering provided by the stand of evergreens in line between the processor and the residence. However he believed that the levels at the residence would **"not be dangerous or harmful"**. Bevan provided these calculations to the applicant and the abutters as well as for the record. Bevan said that if more precise calculations are needed by interested parties then an acoustical engineering firm should be contracted for a site survey to do sound measurements with calibrated professional instrumentation. Unfortunately the processor was directed to be removed from the site by the building inspector which will complicate measurements.

- The abutters stopped recording the proceedings and left the meeting at approximately 8:40 pm.
- Howes made a motion to issue the applicant a special permit for his wood processing business with the following conditions:
 - No log deliveries prior to 10 am on Sundays.
 - Processor cannot be run on Sundays.
 - Applicant will construct a sound barrier using sound absorbent material such as hay perpendicular to the line of sight between the processor and any residential building within 600 ft. of the processor. The width and height should be enough to obscure visually the noise sources (saw and engine) from any ground level point of any residential building within 600 ft. of the processor.
 - Plant an evergreen buffer near the road to help visually obscure the operation.

Motion to approve the application was seconded by Strong and unanimously approved.

- ZBA minutes from April 11, 2019 were unanimously approved.
- At 8:52 pm Ness made a motion to close, seconded and unanimously approved.

Meeting re: Wolf application held 05/01/19

This meeting of the Zoning Board of Appeals (ZBA) for the Town of Cummington, Massachusetts took place on Wednesday May 1, 2019 in the Cummington Community House, 33 Main St, Cummington, Massachusetts. This was a continuance of a special permit application process that began on April 11, 2019. A public notice for this meeting was posted in the Community House, and the town website. Also, abutters were notified by phone. The meeting was called to order at 7:02 p.m. by the ZBA Chair Carla Ness. In attendance were ZBA members, Ernest Strong, Kenneth Howes, Mark Bevan and Eric Smith. The applicant Roger Wolf was also in attendance.

- ZBA chair Ness stated that this meeting was prompted by ZBA Secretary Michael Holden for clarification on conditions of this special permit.
- The board voted unanimously to allow Holden to attend by phone conference.
- The ZBA discussed the conditions and made additions and clarifications developed during the ZBA meeting held on April 18, 2019

The board found that because of the conditions of issuance it has included in the grant of the special permit, the use:

1. is not detrimental to the public good but in fact provides a service to the community;
2. is in character with the existing uses in the Rural-Residential district and wood processing is a common occurrence in the community;
3. does not create undue traffic as customers do not visit the site;
4. will not be dangerous or harmful to the general public due to undue noise, odor, vibration, dust, smoke, water pollution, or any other similar reason;
5. will be sufficiently landscaped and buffered from existing uses and roads;
6. can be adequately serviced by necessary utilities.

Ness made motion "to accept the amended conditions to the previously approved (04/18/2019) special permit application as follows:

1. Hours of allowed business operation Monday – Saturday 7 a.m. to 6 p.m.
2. Processor will not be run on Sunday and no log deliveries prior to 10 a.m. on Sunday
3. Applicant will construct a sound barrier using sound absorbent material such as hay perpendicular to the line of sight between the processor and any residential building within 600 ft. of the processor. The width and height should be enough to obscure visually the noise sources (saw and engine) from any ground level point of any residential building within 600 ft. of the processor.
4. Plant an evergreen buffer near the road to help visually obscure the operation.
5. Any increase in the scale of the operation by adding a larger or an additional wood processor would require applying for and being granted a new special permit."

Motion to approve the amended conditions was seconded by Howes and unanimously approved.

- ZBA minutes from April 18, 2019 were unanimously approved.
- Strong asked about a bill from Attorney Markey relating to discussions with Lesser and Doktor. Ness stated that she believed that those charges will be paid by the abutters and concerned citizens group.

- Ness encouraged ZBA members to attend the Special Town Meeting on May 3 2019\ at 6 p.m. The Planning Board will be presenting new by-laws relating to cannabis cultivation.
- 8:12 p.m. Ness made a motion to close, seconded and unanimously approved.

The following is a list of documents used.

- 1) Application for Special Permit, Variance, or Appeal by Roger Wolf
- 2) Letter dated November 1, 2018 from the Tonelli's to the Building Inspector
- 3) Letters dated November 14, 2018 and December 5, 2018 from the Building Inspector to the Tonelli's
- 4) Opposition letter dated April 11, 2019 on the behalf of the Tonelli's submitted by Michael Pill of GML
- 5) Opposition letter by Paul W. Carman
- 6) Opposition letter by Charlene Madison
- 7) Town of Cummington Zoning Bylaws
- 8) Support letter disputing points made in Attorney Pill's document and submitted by Cheryl Major
- 9) 2nd opposition letter by Charlene Madison
- 10) Group letter supporting the applicant signed by 13 individuals
- 11) Decibel (dB) calculations and estimated level at 527 ft. distance

Respectfully submitted by Mark Bevan

April 11, 2019

As a member of the Zoning Board of Appeals in Cummington I would like it recorded and on the record, that in the special permit application from Roger Wolf there is no conflict of interest. While I am an abutter to Mr. Wolf's home residence I do not abut the property which is in question for a special permit. I am not family and have no financial interest in Mr. Wolf's business, therefore will remain fair, impartial and objective to the matter at hand.

Respectfully,

Eric Smith

A handwritten signature in black ink, appearing to read "Eric Smith", with a stylized flourish at the end.

Certified Mail – Return Receipt Requested

7016 3560 0000 7016 6079

November 1, 2018

Joseph Latronica,
Cummington Building Inspector
P.O. Box 128
Cummington, MA 01026

RE: Request For Enforcement of Zoning Regulations – M.G.L. Chapter 40A Section 7

Dear Mr. Latronica:

Please consider this letter to be an official request for action under M.G. L. Chapter 40A Section 7.

As indicated to you recently over the telephone, we reside at 362 Stage Road in Cummington having purchased the land in 1988. We built our house approximately one year later. Roger Wolf, who resides at 154 Nash Road, acquired a vacant parcel of land that abuts our property sometime after that time and over the course of time began to process firewood at the site. In the initial years, the level of production was small as was the accompanying noise. Over the past several years it has grown into a very different environment. The use of the land for production of firewood has substantially increased to a commercial operation. We estimate that approximately 20 – 25 truck loads of logs are delivered to this site annually where they are stacked and processed into firewood throughout the year. The processed firewood is then trucked off the property and sold.

Section 5 Use Regulation Schedule under agricultural activity or use lists "woodlots". This is not a woodlot. The definition of woodlot in Merriam Webster is : *a restricted area of woodland usually privately maintained as a source of fuel, posts, and lumber.*

The emphasis here is on "privately maintained". Inherent in the meaning of woodlot is the use of woodlots for timber, firewood production, pulpwood, maple syrup production, Christmas trees, etc. that are actually harvested from the lot. To be clear, the trees that are being processed into firewood on this parcel **are not grown on his woodlot.** They are, in fact, being transported to the site on a regular schedule to be processed into firewood and then trucked off the premises for retail sale to various customers.

It is our contention that the accumulation of 15' – 25' high piles of logs is detrimental, hazardous, injurious and obnoxious to the neighborhood and does not fit in with residential use. We've enclosed several photographs of the site.

An additional area of concern is the noise level which is constant, very loud and unreasonably unpleasant. The processing of firewood takes place during the week and on weekends. The delivery of logs is almost always done on Sunday mornings. In fact, the past two deliveries were done on Sunday October 21, 2018 at 8:17 a.m. and Sunday October 28, 2018 at 8:20 a.m.

We have attempted to discuss our concerns with Mr. Wolf on multiple occasions over the past four years. We do not wish to prevent Roger Wolf's ability to earn a living and it is unfortunate for all involved; however, we are steadfast in our belief that we are entitled to enjoy our property in peace without the levels of noise and other disturbances that arise from a commercial sawmill operation. The easiest solution is to consider the other land owned by Roger Wolf for suitability for this use.

I hope you'll agree that the primary purpose of zoning regulations are to protect property owners against deleterious uses of land that diminish property values and have a negative effect on neighborhoods.

In the event we do not receive a response within 14 days as indicated in the statute, our attorney has advised us that we will need to file suit against you, in your official capacity, and the Town of Cummington.

Thank you,


Gregory and Karen Tonelli

cc: (w/o photos): Michael Pill, Esq.
Monica Vandoloski, Russell Sears and William Adams
Roger Wolf (certified mail and first class mail)



TOWN OF CUMMINGTON

*33 Main St, P.O. Box 128
Cummington, MA 01026
413-200-5013 (Phone), 413-634-5568 (fax)
buildinginspector@cummington-ma.gov*

Gregory and Karen Tonelli
362 Stage Rd.
Cummington, MA 01026

14 November 2018

RE: Request for Enforcement; Stage Rd. Map-16 Lot-6

Received, 7-November, request for enforcement.

In order to determine the merit of any request for enforcement, there is the requirement for the gathering of facts, including but not limited to; site visit, zoning review, assessing records, and due diligence with regards to the rights of both parties.

This effort does require an appropriate amount of time used. Based on the very part time (4 hours office time per week) allotted, I estimate to complete the determination / Interpretation on or before 7 December 2018.

Joseph P. Latronica

Inspector of Buildings / Zoning Enforcement Officer

cc : Selectboard : Town of Cummington



TOWN OF CUMMINGTON

www.cummington-ma.gov/Boards.php?4

33 Main St, P.O. Box 128

Cummington, MA 01026

413-200-5013 (Phone), 413-634-5568 (fax)

buildinginspector@cummington-ma.gov

Mr. Roger Wolfe
154 Nash St.
Cummington, MA 01026

5 December 2018

RE: Stage Rd. cordwood production; request for enforcement

Based on my final inspection at the above referenced location, and our conversation of 5 December 2018, mill equipment having been removed and no further delivery of logs occurring; I find no violation currently exists.

Should you want to continue with cordwood production the following would apply:

Submit appropriate information that your endeavor complies with Agricultural / Silviculture exemptions as defined in MGL Ch 40A Para 1 (25% product produced from site / 50% from Massachusetts)

Seek a Special Permit from the Zoning Board of Appeals pursuant to Town of Cummington Zoning By-Laws, Section 5-20 Use Regulations; and Section 3-30 Special Permits

Thank You for your cooperation in this matter.

If I can be of any assistance, I am available Mon. and Wed. from 10AM to 12PM in my office at the Town Community Center

Joseph P. Latronica
Inspector of Buildings/Zoning Enforcement Officer

Cc: Selectboard
File
Gregory and Karen Tonelli

GML GREEN MILES LIPTON, LLP

77 PLEASANT STREET
P.O. BOX 210
NORTHAMPTON, MA 01061-0210
PHONE (413) 586-8218
FAX (413) 584-6278
(Main Office)
www.greenmiles.com

WESTFIELD OFFICE:
48 EAST SILVER STREET, SUITE 5
WESTFIELD, MA 01085
PHONE (413) 642-8367
FAX (413) 579-5357

ATTORNEYS AT LAW

JOHN J. GREEN, JR.
HARRY L. MILES
ROGER P. LIPTON
JOHN M. MCLAUGHLIN*
*ALSO ADMITTED IN CONNECTICUT
MICHAEL PILL
BRAD A. SHIMEL
SUSAN L. MILES
MICHAEL Z. EDELSTEIN
DAVID C. KUZMESKI, OF COUNSEL
RAYMOND W. ZENKERT, JR., OF COUNSEL***
*** ALSO ADMITTED IN OHIO & MICHIGAN
BRIAN L. BLACKBURN (Dec.)

April 11, 2019 VIA email attachment to zba@cummington-ma.gov & delivery at 4/11/2019 meeting

To: Town of Cummington Zoning Board of Appeals (Mark Bevan, Michael Holden, Kenneth Howes, Carla Ness, Eric Smith, Ernest Strong)

Re: Opposition to Roger Wolf's special permit application for a "firewood processing facility," submitted on behalf of Karen M. Tonelli & Gregory J. Tonelli, 362 Stage Road, Cummington

Table of Contents and Executive Summary

Page

1. Cummington's Zoning Bylaw is "prohibitive," meaning that all uses not expressly authorized are prohibited; section 5-10.1 states "No building or structure shall be erected or used and no land shall be used except as set forth in the Use Regulation Schedule or as otherwise exempted by statute." Mr. Wolf's "firewood processing facility" is not expressly authorized by "Use Regulation Schedule" in section 5-20 of the Cummington Zoning Bylaw. 2
 2. The only conceivable use category for Mr. Wolf's proposed use is "Business" in Cummington Zoning Bylaw section 5-20 "Use Regulation Schedule" which requires a special permit for "Other business uses which meet the intent and purpose of this bylaw." 3
 3. The category "Other business uses which meet the intent and purpose of this bylaw" is invalid because it does not meet the specificity requirement in Mass. General Laws, chapter 40A, Section 9, Paragraph 1, which requires that "Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit." 4
 4. Even if Mr. Wolf's proposed "firewood processing facility" was an allowed use, his application fails to provide any evidence upon which the Zoning Board can make the findings for a special permit required by Cummington Zoning Bylaw sections 3-30.3 & 4-30.1.c; especially applicable to this case is subsection 4-30.1.c(4), which states as follows (bold face type added):

A Special Permit may be granted in the Rural-Residential District if the Special Permit granting authority finds that the following conditions are met: ... 4) That the use will not be dangerous or harmful to the general public due to undue noise, odor, vibration, dust, smoke, water pollution, or for any other similar reasons.

7
 5. Even if Mr. Wolf could obtain a special permit, that would not immunize him from civil liability for creating a private nuisance due to noise that unreasonably disturbs neighboring homeowners. 11
- Conclusion: Mr. Wolf needs to find another location for his firewood processing; it would be allowed as a matter of right as a "home occupation" on the same land where his house is located. 13
- Appendices: Mass. Executive Office of Environmental Affairs Noise Policy and DEP Interpretation 14

1. **Cumington's Zoning Bylaw is "prohibitive," meaning that all uses not expressly authorized are prohibited; section 5-10.1 states "No building or structure shall be erected or used and no land shall be used except as set forth in the Use Regulation Schedule or as otherwise exempted by statute." Mr. Wolf's "firewood processing facility" is not expressly authorized by "Use Regulation Schedule" in section 5-20 of the Cumington Zoning Bylaw.**

Cumington has a "prohibitive" zoning bylaw, like the zoning ordinance in *APT Asset Management, Inc. v. Board of Appeals of Melrose*, 50 Mass. App. Ct. 133, 138 (2000) ("[T]he Land Court judge concluded that the ordinance is 'prohibitive' rather than 'permissive,' that is, uses not expressly authorized by its terms are prohibited.").

A leading legal treatise on municipal law explains that "Zoning ordinances may be permissive or prohibitive in form, either enumerating permitted uses and prohibiting all others or enumerating prohibited uses and permitting all others; or the ordinance may combine these two methods." 8 McQuillin, *The Law of Municipal Corporations*, § 25:56 (3rd ed. 2006 & Supp. 2017). Massachusetts case laws is consistent with this approach. The Massachusetts Supreme Judicial Court stated as follows in *Town of Harvard v. Maxant*, 360 Mass. 432, 436 (1971):

There is no requirement that zoning by-laws or ordinances follow any particular pattern or structure. They may take the form of prescribing uses permitted or prescribing uses prohibited, or a combination of the two. The town adopted a by-law which combines the two. It prohibits certain uses from all zoning districts of the town, and it also prescribes and limits the uses permitted in each district. This by-law is 'both permissive and prohibitive in form.' *Building Inspector of Chelmsford v. Belleville*, 342 Mass. 216, 217.

To the same effect is the case cited in the above quotation, *Building Inspector of Chelmsford v. Belleville*, 342 Mass. 216, 217 (1961) ("A zoning by-law need not be both permissive and prohibitive in form. It may utilize one or the other, or both forms.").

Since "No one of course has an absolute right to a special permit," *S. Kemble Fischer Realty Trust v. Board of Appeals of Concord*, 9 Mass. App. Ct. 477, 481 (1980), citing *Humble Oil & Refining Co. v. Board of Appeals of Amherst*, 360 Mass. 604, 605 (1971), the burden of proof is on Mr. Wolf as the

special permit applicant to specify exactly which use category allowed by the Cummington Zoning Bylaw applies to his special permit application. *Tebo v. Board of Appeals of Shrewsbury*, 22 Mass. App. Ct. 618, 626 (1986) (“[T]he recipient of the permit, had the burden of going forward and proving that a permit could lawfully be granted to it.”). Unless and until he does so, no special permit can be granted to him.

2. **The only conceivable use category for Mr. Wolf’s proposed use is “Business” in Cummington Zoning Bylaw section 5-20 “Use Regulation Schedule” which requires a special permit for “Other business uses which meet the intent and purpose of this bylaw.”**

The “Use Regulation Schedule” in Cummington Zoning Bylaw Section 5-20 allows only the following “Business” uses:

- Auto, boat, or farm equipment sales, rental, service
- Bank, financial institutions
- Business or professional offices
- Funeral Home
- Restaurants, eating establishments
- Retail sales or services
- Wholesale without storage
- Home occupations that employ no more than three (3) persons from the outside of, or in addition to, the resident family members
- Other business uses which meet the intent and purpose of this By-Law
- The manufacture, storage or dumping of toxic, or hazardous waste materials
- Gravel bank, Quarry, etc.

Processing logs into firewood is an industrial use. See *D’Orlando v. Board of Appeals of Danvers*, 5 Mass. App. Ct. 824, 824 (1977) (Uses allowed in industrial zoning district included “assembling and processing materials and products of every nature.”). It appears that of the uses allowed by the Cummington Zoning Bylaw, the only one that could possibly apply to Mr. Wolf’s proposed use is “Other business uses which meet the intent and purpose of this By-Law.” The problem with that category, discussed below in the next section of this memorandum, is that it is so broad as to be legally meaningless.

3. **The category “Other business uses which meet the intent and purpose of this bylaw” is invalid because it does not meet the specificity requirement in Mass. General Laws, chapter 40A, Section 9, Paragraph 1, which requires that “Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit.”**

The term “business use” in Cummington Zoning Bylaw section 5-20 is not among the terms defined by the bylaw. In this situation, the Massachusetts Supreme Judicial Court has authorized the use of dictionary definitions for statutory construction. The court stated the rule this way in *Commonwealth v. Zone Book, Inc.*, 372 Mass. 366, 369 (1977):

When a statute does not define its words we give them their usual and accepted meanings, as long as these meanings are consistent with the statutory purpose. See *Commonwealth v. Gove*, 366 Mass. 351, 354, (1974); *Franki Foundation Co. v. State Tax Comm’n*, 361 Mass. 614, 617 (1972). We derive the words’ usual and accepted meanings from sources presumably known to the statute’s enactors, such as their use in other legal contexts and dictionary definitions.

To the same effect is G.L. c. 4, § 6(3), which states as follows (bold face type added for emphasis):

In construing statutes the following rules shall be observed, unless their observance would involve a construction inconsistent with the manifest intent of the law-making body or repugnant to the context of the same statute: ...

Third, Words and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Webster’s Third New International Dictionary, Unabridged (Online edition 2019 at <http://unabridged.merriam-webster.com/unabridged/business>) defines the term “business” very broadly, as for example “a usually commercial or mercantile activity customarily engage in as a means of livelihood and typically involving some independence of judgment and power of decision.” That definition covers virtually every kind of commercial or industrial enterprise.

The problem is that such a broad definition for a use allowed by special permit in a Massachusetts zoning bylaw or ordinance violates the state Zoning Act. G.L. c. 40A, § 9, ¶ 1, which requires that

“Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit.”

In *SCIT, Inc. vs. Planning Board of Braintree*, 19 Mass. App. Ct. 101, 109-110, the Appeals Court made it clear the statutory language means what it says, with these words:

Section 9 of 40A preserves the traditional outlines of the special permit power discussed above and provides for the use of special permits in certain new ways. See Bok & White, *The New Zoning Act*, 20 Boston Bar.J. no. 2, 11-16 (Feb.1976).¹⁵ *110 Section 9 is unambiguous, however, in authorizing special permits only for “specific types of uses”, and it is clear that this language was intended to mean exactly what it says. See 1972 House Doc. No. 5009, at 31, where it is said that special permits are to be “granted only for uses *specifically* authorized by the ordinance where it is appropriate to ‘condition’ the use or control its density or location” (emphasis original).

The most broadly worded provision to pass muster under this statutory standard is much more specific than the Cummington Zoning Bylaw provision allowing every kind of “business” use without any limitation whatsoever. The Supreme Judicial Court put it this way in *Gage v. Town of Egremont*, 409 Mass. 345, 349 (1991):

The Egremont by-law adequately describes some but not all of the types of uses for which the planning board may issue special permits. The by-law authorization for granting special permits for multi-family dwellings and for “retail business or consumer service establishments” is sufficiently specific to satisfy the requirement of § 9 that such permits be authorized “for specific types of uses.” We agree with the motion judge, however, that the authorization of special permits for “[a]ny other use determined by the Planning Board and not offensive or detrimental to the neighborhood” (§ 4.3.1.3 of the by-law) does not sufficiently define any “specific” type of use as § 9 requires and is, therefore, invalid.

Later court decisions confirm that to pass muster under G.L. c. 40A, § 9, ¶ 1, zoning use categories must have stated limitations. *Fordham v. Butera*, 450 Mass. 42, 46-47 (2007) (Court held that zoning bylaw “the storage of vehicles, materials, supplies and equipment in connection with [certain] commercial or business activities” was “a sufficiently specific type of use to satisfy the specificity requirements of G.L. c. 40A, § 9”); *Lattuca v. Houck*, 1995 WL 17215786 at *3 (Land Ct. 1995) (Kilborn, J.) (“Section 4-1(c) complies with the requirement that special permit provisions ‘provide for specific types of uses’, G.L. 40A, § 9. The specific type of use in this case is a dwelling for three or more

families. Section 4-1(c) thus avoids the vice described in *Gage v. Egremont*, 409 Mass. 345 (1991).”); *Block v. Zoning Board of Appeals of the Town of Otis*, 1994 WL 16193438 at *2 (Land Ct. 1994) (Scheier, J.) (Court held that Otis Zoning Bylaw authorizing a special permit for a ““Golf course, ski tow, riding stable or *other recreational facility of similar character*”” (emphasis added [by the Court]) was sufficiently specific because “The drafters of the Otis By-law thus sought to limit recreational uses to those conducted in and reliant upon nature.”)

If the Cummington Zoning Board of Appeals tries to grant Mr. Wolf a special permit under the above quoted provision authorizing every imaginable kind of business use, it will only precipitate a lawsuit challenging the validity of both the special permit and that bylaw provision. I urge both the Zoning Board and Mr. Wolf to consider the following three maxims of litigation, which I frequently invoke to advise clients:

- (1) The best lawsuit is one you can avoid.**
- (2) If you do become involved in a lawsuit, the only sure winners will be the lawyers for the opposing parties.**
- (3) In the real world, where good cases sometimes lose and bad cases sometimes win, the outcome of litigation is always uncertain. Predicting how it will end is like predicting a roll of the dice.**

Nowadays litigation in the Massachusetts Land Court in Boston (which is where we would file the appeal in this case) costs at least tens of thousands of dollars.

Hopefully Mr. Wolf will not make the mistake of assuming that the Tonellis and other neighbors lack either the will or the means to pursue litigation. He must realize that he has threatened what for them (like for most families) is their largest single asset – their homes. No one would want to buy or live in their houses with the roar of his wood processing machine next door.

That is why the Tonellis finally concluded it was necessary to involve me in this case. After years of putting up with the mess and the noise of Mr. Wolf’s firewood processing next door, they finally concluded that retaining legal counsel was their only hope of getting him to pay attention to the concerns they tried without success to express directly to him.

4. Even if Mr. Wolf's proposed "firewood processing facility" was an allowed use, his application fails to provide any evidence upon which the Zoning Board can make the findings for a special permit required by Cummington Zoning Bylaw sections 3-30.3 & 4-30.1.c; especially applicable to this case is subsection 4-30.1.c(4), which states as follows (underlining added):

A Special Permit may be granted in the Rural-Residential District if the Special Permit granting authority finds that the following conditions are met: ... 4) That the use will not be dangerous or harmful to the general public due to undue noise, odor, vibration, dust, smoke, water pollution, or for any other similar reasons.

Sections 3.30.3 and 4.30.1c set forth all of the criteria on which Mr. Wolf is required to present evidence to the Zoning Board, as follows (bold face type and underlining added for emphasis):

A Special Permit shall only be issued if the Special Permit granting authority finds that such use meets the following conditions:

- a. That the use is in harmony with the general purpose and intent of this Zoning By-Law.
- b. That the use meets the use and dimensional requirements as specified in Sections 5 and 6 of this Zoning By-Law.
- c. The Special Permit granting authority may also impose conditions, safeguards and limitations on time and use.
- d. **Additional Special Permit criteria are contained in Section 4-30.**

* * * * *

A Special Permit may be granted in the Rural-Residential District if the Special Permit granting authority finds that the following conditions are met:

- 1) That the use will not be detrimental to the public good.
- 2) That the use will be in character with the existing uses in the Rural-Residential District.
- 3) That the use will not create undue traffic which might be detrimental to the public.
- 4) **That the use will not be dangerous or harmful to the general public due to undue noise, odor, vibration, dust, smoke, water pollution, or for any other similar reasons.**
- 5) **That the use will be sufficiently landscaped and situated to buffer it from existing uses and from all roads.** See Dimensional Regulation Schedule re: setbacks for noisy, dangerous, or other-wise disturbing uses.
- 6) That the use can be adequately serviced by water, sewer and other necessary utilities and efficiently provided with public services.

There are no specific facts included in Mr. Wolf's special permit application to provide the board with any basis to make the required findings set forth above. The requirement of findings is not satisfied by simply reciting the above quoted language from the zoning bylaw. *Josephs v. Board of Appeals of Brookline*, 362 Mass. 290 (1972) (Judge cannot "make findings which, in substance, constitute a 'mere repetition of the statutory words.' *Brackett v. Board of Appeal of the Bldg. Dept. of Boston*, 311 Mass. 52, 54."). Rather, "In granting a special permit, the board must set forth the reasons for its decision that proposed development meets the applicable statutory and bylaw standards, including affirmative findings as to the existence of each condition required for the granting of the special permit. [Citations omitted.]" *Sheehan v. Zoning Board of Appeals of Plymouth*, 65 Mass. App. CDt. 52, 55-56 (2005).

In other words, to grant Mr. Wolf's special permit application, the Zoning Board must make findings supported by specific facts, which Mr. Wolf's application fails to provide.

With respect to the Cummington Zoning Bylaw's special permit requirements, the noise issue will be addressed below in the next section of this memorandum. The lack of landscaping and screening is documented by the following photographs showing Mr. Wolf's operation before it was stopped by the building inspector's cease and desist order. The first photo shows the view from the Tonellis' property line:



The next two photos on the following page make it clear this is a major industrial wood processing operation, as follows:



5. Even if Mr. Wolf could obtain a special permit, that would not immunize him from civil liability for creating a private nuisance due to noise that unreasonably disturbs neighboring homeowners.

One major complaint about Mr. Wolf's firewood processing operation is noise. The Tonellis describe the "noise level" as "constant, very loud and unreasonably unpleasant" in their November 1, 2018 zoning enforcement request to the Cummington Building Inspector. They also wrote as follows in that same letter:

We have attempted to discuss our concerns with Mr. Wolf on multiple occasions over the past four years. We do not wish to prevent Roger Wolf's ability to earn a living and it is unfortunate for all involved; however, we are steadfast in our belief that we are entitled to enjoy our property in peace without the levels of noise and other disturbances that arise from a commercial sawmill operation. The easiest solution is to consider the other land owned by Roger Wolf for suitability for this use.

Even if Mr. Wolf could obtain a zoning special permit, that will not insulate him from legal liability. No permit or license can immunize any defendant from liability for negligence, nor can it authorize creation of a private nuisance (i.e., using one's own land in a manner that unreasonably disturbs or interferes with other owners' use of their land, which in this means their homes), a legal rule established by the following court cases, among others:

Lummis v. Lilly, 385 Mass. 41, 46-47 (1982) ("It is settled that a license does not immunize the licensee from liability for negligence or nuisance which flows from the licensed activity.")

Ferriter v. Herlihy, 287 Mass. 138, 143-144 (1934) (The court rejected the contention that a milk business could defend against a nuisance claim on the grounds that it was operated under licenses issued by public officials.)

Hakkila v. Old Colony Broken Stone & Concrete Co., 264 Mass. 447, 451-452 (1928) (A permit for blasting does not justify a nuisance, because it, "conferred upon the defendant no right so to blast rock as to throw stones upon the land of others.")

Commonwealth v. Stevens, 27 Mass. (10 Pick) 247, 248-249 (1830)

The court are of the opinion that the provisions of the acts for the support and regulation of mills, cannot be construed as to justify or excuse the erection of a dam, in such manner as to overflow a public highway, already appropriated and in actual use, and thereby render it impassable. . . . We are satisfied that the existing provisions of these laws do not warrant the

acts done by the defendant, and furnish no legal ground of defense against the indictment for a nuisance, with which he stands charged.” ; *accord, Eames v. New England Worsted Co.*, 52 Mass. (11 Metc.) 570, 572 (1846) (“The mill act affords no warrant or excuse for erecting or continuing a nuisance.”).

The court held that noise can constitute an actionable private nuisance in *Rattigan v. Wylie*, 445 Mass. 850, 858-859 (2006) with these words:

We interpret broadly one’s right to use and enjoy his or her land. See *Hennessy v. Boston*, *supra*; *Metropoulos v. MacPherson*, *supra*. “Nuisances at common law frequently arise from offensive sights, sounds or smells.” *General Outdoor Advertising Co. v. Department of Pub. Works*, 289 Mass. 149, 183 (1935). An actor need not “directly damage the land or prevent its use in order to constitute a nuisance.” 58 Am.Jur.2d Nuisances § 98 (2002). The landowner’s interest “comprehends the pleasure, comfort and enjoyment that a person normally derives from the occupancy of land.” Restatement (Second) of Torts, *supra* at § 821D comment b. This interest is informed by “[t]he location, character and habits of the particular *859 community.” *Id.* at § 821F comment e. See *Kasper v. H.P. Hood & Sons*, 291 Mass. 24, 279 (1935); 58 Am.Jur.2d Nuisances, *supra* at §§ 102, 107. “[C]ontinuance or recurrence of the interference” will also factor in the determination. Restatement (Second) of Torts, *supra* at § 821F comment g. See *Stodder v. Rosen Talking Mach. Co.*, 241 Mass. 245, 250–251 (1922), *S.C.*, 247 Mass. 60 (1923) (talking machine’s “continuous and monotonous playing of piece after piece” “substantially all day,” on most days, actionable).

Attached to this memorandum as appendices and incorporated herein by reference are the Massachusetts Executive Office of Environmental Affairs “Division of Air Quality Control Policy” and the Department of Environmental Protection’s written interpretation of that policy. These documents will provide additional support for a private nuisance lawsuit against Mr. Wolf, if he tries to resume his firewood processing operation on this site.

Of course the Tonellis and other neighbors do not want to engage in an expensive, time-consuming and stressful legal battle with Mr. Wolf. No doubt unintentionally, he has backed the neighbor families into a corner where his conduct threatens the value and marketability of their homes. From their perspective (mindful of the maxim that “there are three sides to every story – your side, my side, and the right side”), he has in effect for years shifted part of the burden of his business onto his unwilling neighbors. He must accept responsibility for the adverse external effects of his business operation.

Conclusion: Mr. Wolf needs to find another location for his firewood processing; it would be allowed as a matter of right as a “home occupation” on the same land where his house is located.

Mr. Wolf does not need a special permit to resume his wood processing operation where he lives, where hopefully the only home and family affected would be his own. The “Use Regulation Schedule” in Cummington Zoning Bylaw Section 5-20 provides that he can as a matter of right engage in any “Home occupations that employ no more than three (3) persons from the outside of, or in addition to, the resident family members.”

For all of the reasons set forth above in this memorandum, I hope Mr. Wolf will decide to withdraw his special permit application. If he does not do so, then I respectfully submit the requested special permit cannot be granted by the Cummington Zoning Board of Appeals.

Please let me know if there are questions or if anything more is needed concerning anything set forth herein. Your consideration of these concerns is greatly appreciated.

Very truly yours,



Michael Pill

Enclosures

Copy via email attachment: Clients

MP/csh/L1.1157.Tonelli

Appendices:

- (1) Mass. Dept. of Environmental Protection (DEP) Noise Policy**
- (2) DEP Interpretation of Noise Policy**



The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Quality Engineering
Division of Air Quality Control
One Winter Street, Boston 02108

February 1, 1990

DAQC Policy 90-001

DIVISION OF AIR QUALITY CONTROL POLICY

This policy is adopted by the Division of Air Quality Control. The Department's existing guideline for enforcing its noise regulation (310 CMR 7.10) is being reaffirmed.

P O L I C Y

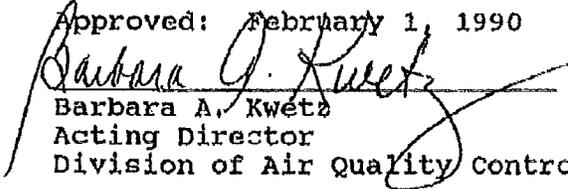
A source of sound will be considered to be violating the Department's noise regulation (310 CMR 7.10) if the source:

1. Increases the broadband sound level by more than 10 dB(A) above ambient, or
2. Produces a "pure tone" condition - when any octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

These criteria are measured both at the property line and at the nearest inhabited residence. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment operating hours. The ambient may also be established by other means with the consent of the Department.

Approved: February 1, 1990

Effective: Immediately


Barbara A. Kwetz
Acting Director
Division of Air Quality Control



Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Noise Pollution Policy Interpretation

Noise is a public health concern that falls within the scope of Massachusetts Department of Environmental Protection (MassDEP) authority as a form of regulated air pollution. See the related law, regulations, and policy; M.G.L. Chapter 111, Sections 142A-M, 310 CMR 7.00; Air Pollution Control, and MassDEP Noise Policy

Definitions (310 CMR 7.00)

- *Noise* is defined as "sound of sufficient intensity and/or duration as to cause a condition of air pollution."
- *Air pollution* means "the presence in the ambient air space of one or more air contaminants or combinations thereof in such concentrations and of such duration as to: (a) cause a nuisance; (b) be injurious, or be on the basis of current information, potentially injurious to human health or animal life, to vegetation, or to property; or (c) unreasonably interfere with the comfortable enjoyment of life and property or the conduct of business."

When Does MassDEP Evaluate Noise Impacts?

MassDEP evaluates how noise may affect people when 1) the agency reviews applications for approval under its air pollution regulations (310 CMR 7.02) for construction of facilities that will generate more than threshold amounts of pollutants such as nitrogen dioxide, sulfur dioxide, carbon monoxide, volatile organic compounds, particulate matter, and substances that are toxic in air; and 2) the agency responds to complaints from the public about noise generated by an existing source:

- When reviewing applications for pre-construction approval of new sources of air pollution, MassDEP examines the potential increase in sound levels over ambient conditions and the impacts of noise at both the source's property line and at the nearest residence or other sensitive receptor (e.g., schools, hospitals) located in the area surrounding the facility and occupied at the time of the permit review. *Please note: MassDEP requires that an air approval be obtained when a proposed facility is expected to emit more than threshold amounts of specific pollutants. If noise is the only air pollutant expected to be emitted by a facility, a pre-construction air approval is not required.*
- When MassDEP responds to a complaint about an existing source of noise, it focuses on protecting affected people at their residences and in other buildings that are occupied by sensitive receptors from nuisances and the public health effects of the noise. *Please note: An existing source of sound may or may not have needed a MassDEP air approval before it was built.*

Where Are MassDEP's Noise Criteria Applied?

The MassDEP noise pollution policy describes criteria that MassDEP uses to evaluate noise impacts at both the property line and the nearest occupied residence or other sensitive receptor. When noise is found to be a nuisance or a threat to health, MassDEP requires the source to mitigate its noise.

Noise levels that exceed the criteria at the source's property line by themselves do not necessarily result in a violation or a condition of air pollution under MassDEP regulations (see 310 CMR 7.10 U). The agency also considers the effect of noise on the nearest occupied residence and/or building housing sensitive receptors:

- In responding to complaints, MassDEP measures noise levels at the complainant's location and at other nearby locations that may be affected (e.g., residences and/or buildings with other sensitive receptors). If the noise level at a sensitive receptor's location is more than 10 dB(A) above ambient, MassDEP requires the noise source to mitigate its impact.
- A new noise source will be required to mitigate its sound emissions if they are projected to cause the broadband sound level at a residence or building housing sensitive receptors to exceed ambient background by more than 10 dB(A).
- A new noise source that would be located in an area that is not likely to be developed for residential use in the future (e.g., due to abutting wetlands or similarly undevelopable areas), or in a commercial or industrial area with no sensitive receptors may not be required to mitigate its noise impact on those areas, even if projected to cause noise levels at the facility's property line to exceed ambient background by more than 10 dB(A). However, a new noise source that would be located in an area in which housing or buildings containing other sensitive receptors could be developed in the future may be required to mitigate its noise impact in these areas.

This policy has been designed to protect affected residents and other sensitive occupants of nearby property, but not necessarily uninhabited areas in and around the source's property. Sources of noise may need to implement mitigation if residences or buildings occupied by sensitive receptors are developed where they may be affected by the source's noise.

Sagemark ConsultingSM

A division of Lincoln Financial Advisors

Private Wealth Advisor

Lincoln Financial Advisors Corp.
5355 Town Center Road, Suite 401
Boca Raton, FL 33486
phone 561 869-6447
fax 561 869-6448
cell 561 504-4694
Paul.Carman@LFG.com

March 18, 2019

I am offering this letter in strong protest to the Roger Wolf firewood processing operation on Stage Road.

The facility, located behind my Nash Road property, has long been in operation. The continuous noise from wood processing machinery and from the trucks accessing and egressing the property is an almost constant disruption to the solitude one seeks when living in the hill towns. I believe that this processing operation has only served to create a nuisance to the neighborhood.

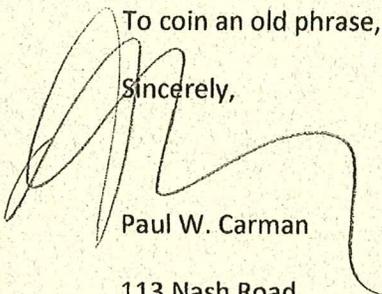
The surface environmental impact of this facility is obvious. The land on Stage Road has been decimated and laid to waste with little or no vegetation left. There are several natural streams that run nearby including one that runs out of my pond and all of them eventually connect with the river below. I'm certain these are all impacted by the facility. While it is easy to see the obvious effect that this facility has had on the surface of the land, one can only imagine the negative impact that it has had on ground water (we all get our drinking water from wells), soil erosion, wildlife and other natural abilities for the area.

On a personal note, when I started looking for a home in Western MA one of the deciding factors that led me to Cummington was the quiet serenity and natural beauty the area offered. For those positives, I was willing to give up proximity to area attractions including shopping that I could have found had I purchased a home nearer to Northampton or Pittsfield. In Cummington we expect to live in peace and quiet and to relish the continuance of the natural beauty we all enjoy.

On a side note, rather than promoting projects such as this one, Cummington should be promoting their serenity and natural beauty in all social media and print outlets in which the town participates. It is extremely rare today to find a place where construction, traffic and noise are not a major issue. Near my FL home, almost without exception, there is the continuous hum of construction, traffic, air traffic and other environmental noise pollutants. Highway traffic and construction noise can be heard 24 hours a day regardless of whether one lives east or west and to escape that noise is almost impossible, unless one has a refuge like Cummington.

To coin an old phrase, "you don't know what you've got 'till it's gone."

Sincerely,



Paul W. Carman

113 Nash Road

www.LFA-Sagemark.com

Paul W. Carman is a registered representative of Lincoln Financial Advisors Corp.

Securities offered through Lincoln Financial Advisors Corp., a broker-dealer. Investment advisory services offered through Sagemark Consulting, a division of Lincoln Financial Advisors Corp., a registered investment advisor. Insurance offered through Lincoln Financial Advisors Corp.

Charlene F. Madison, PhD

85 Nash Road
Cummington, MA 01026
713.899.7449
cfmcassidy@me.com

April 11, 2019

Town of Cummington
Zoning Board of Appeals

Re: Wolf Special Permit Application for Stage Road Property

I am submitting this letter to the Zoning Board of Appeals in vehement protest to Roger Wolf's application for a Special Permit to operate a firewood processing facility on his property located on Stage Road, identified on assessor's map 16 as lot 6.

My residential property located at 85 Nash Road, identified on map 16 as lot 8, is directly adjacent to Mr. Wolf's Stage Road property noted above. A wood processing facility has long been in operation on Mr. Wolf's Stage Road property. The longstanding profound noise pollution and disruption created by this facility, as well as the likely deleterious effects on wildlife and the environment, are untenable within the peaceful character of a rural residential community..

I urge you to deny Mr. Wolf's application for a Special Permit to operate a firewood processing facility on his Stage Road property. Mr. Wolf's wood processing activities on this property to date have had an adverse and detrimental impact on the character and serenity of the rural residential community in the area of his operation.

Respectfully,



Charlene F. Madison, PhD

April 18, 2019

Town of Cummington
Zoning Board of Appeals

Re: Roger Wolf's Special Permit Application

Dear Board,

My name is Cheryl Major and I live at 120 Nash Road in Cummington. I am writing in support of Roger Wolf's application for a Special Permit.

Roger Wolf has used his land for the past 20 years to earn a living. He is an honest, hardworking man who was born and raised in this Town. The Wolf family has been a part of this Community for almost 80 years. Roger's use of this property has never been an issue for this Town or this Community until now. This hearing may be about the zoning of Roger's land but it is really about the noise that is created by this use not the use itself.

The Complainants, Mr. and Mrs. Tonelli nor the individual's whose statements were submitted for the record last week were born or raised here. In fact one of the letters submitted is from an individual who does not live in Cummington for several months out of the year. These individual's moved to this Town and now want to tell the Town how it should be run and the other residents how they should live. This is an attack on fundamental freedoms and civil liberties to live the way people have lived in this town for hundreds of years.

Furthermore, the Attorney for Mr. and Mrs. Tonelli submits a 15 page memo which is riddled with threats of lawsuits both on the Town and Roger Wolf. He attempts to intimidate and bully this Board along with Mr. Wolf and the entire Community.

Attorney Pill writes in Section 3 of his memo that the category of "Other business uses which meet the intent and purpose of this By-law" is too broad and violates M.G.L c40A Section 9 which requires that "Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit." If this category violates Massachusetts General Laws then why was it adopted in the Bylaws and approved by the Town? It is a category and should be used to allow for uses and special permits. If not then why is it listed? Attorney Pill is trying to convince this Board that they can only allow uses that are specifically listed as a category. This would mean any use or business that is not listed is therefore prohibited. Is this the intent of the Zoning Bylaws and the Board?

The Zoning Board and Bylaws' purpose, in part, is "To promote the general welfare of the Town of Cummington". This is for all of its residents not just the few who complain. It is in the general welfare to this Town to allow Roger Wolf to continue operations and earn a living while helping other Community members and surrounding Community members to receive wood at a fair cost from a fair and honest person. Roger Wolf serves approximately 90 households in this Town and the surrounding Communities. Those individuals who are provided a service by Roger Wolf will be greatly affected by the decision of the Board.

The Tonelli's number one complaint is the noise of the wood processor. The processor is run on average two hours per day, Mon – Friday, 8 am – 6 pm during the months of April thru November, weather permitting. The processor does not run constantly during this time as the Tonelli's claim. Constant is defined in Merriam Webster's Collegiate Dictionary, Tenth Edition, as "something invariable or unchanging". The Tonelli's have both admitted that they do not work from home on a regular basis. If the Tonelli's are at work every day how many hours are they effected by the noise? The answer to this speaks to the reasonableness of their complaint. If they are not home the majority of the time is it reasonable for them to complain? Attorney Pill has indicated in his Memo on the 1st page in Item 5 "Even if Mr. Wolf could obtain a special permit, that would not immunize him from civil liability for creating a private nuisance due to noise that unreasonably disturbs neighboring homeowners." The key word here is unreasonably. Hearing noise a few hours a day is not unreasonable.

Attorney Pill's memo on Page 11 2nd paragraph states: "One major complaint about Mr. Wolf's firewood processing operation is noise. The Tonelli's describe the "noise level" as "constant, very loud and unreasonably unpleasant". Mr. Wolf's use is not constant and the noise produced from this use is not constant. The wood processor is not run on the weekends and is limited during the week as described above. The work on the weekends includes use of a chainsaw, tractor and truck being used along with on average one log truck delivery on Sunday mornings. None of those uses are prohibitive nor do they rise to the level that the Complainants would prevail in determining that the noise is harmful. Chainsaws, tractors and trucks are used by many residents of this Community. If the Board were to consider this noise as an issue it would set a precedent for the entire Community and expose everyone to being sued by a neighbor who wants complete silence and doesn't feel a chainsaw should be used in an Agricultural Community. This flies in the face of what this Town is all about.

The memo goes on to state that the Complainant has tried to work with Mr. Wolf but does not acknowledge that Mr. Wolf has made accommodations for them by discontinuing the use of the wood processor on the weekends and arranging to have the firewood delivery come after 8:00 am on Sundays. They state that Mr. Wolf should move this operation to his other land where his house is located. What assurance does he have that after he spends the time and money to move the operation that the Tonelli's still won't sue him for noise. They seem to want absolute quiet. This is an agricultural Community and you will always hear lawnmowers, tractors, chainsaws, trucks, etc. Mr. Wolf has made concession and they still aren't happy. It also should be noted that the Tonelli's have benefited from this use by purchasing firewood from Mr. Wolf up until last year.

Neither the Tonelli's nor their Attorney have produced any substantive proof that this use violates the criteria for granting a special permit per the Zoning Bylaws Section 3-30.3 and Section 4-30.1c which in part reads "dangerous or harmful to the general public due to undue noise, odor, vibration, dust, smoke water pollution or for any other similar reasons." The Tonelli's complaints are unfounded and unreasonable.

In addition, in last week's meeting Attorney Pill states that the burden is on Mr. Wolf to prove why a special permit should be granted. But where is the Tonelli's proof that Mr. Wolf has created a "detrimental, hazardous, injurious and obnoxious" condition as stated in the Tonelli's letter to the Building Inspector. They have none. This is all their opinion. Just because someone doesn't like something doesn't mean someone else is breaking the law or creating a hazardous situation. Roger Wolf can't defend claims that are unsubstantiated. The Tonelli's have produced nothing other than how they feel and their opinion that the noise is unreasonable and that it interferes with their enjoyment of their property. No environmental testing has been done or submitted for the record. No water

sampling has been done, no bore samples of the ground have been done, no noise monitoring has been done, no appraisal that shows evidence that their property value has decreased. Nothing other than their opinion and how they feel. This does not rise to the level of proof that Mr. Wolf's use causes any harm to the Tonelli's or any surrounding properties. If Mr. Wolf was cutting down his own trees there would be no Zoning violation but the noise would still be there.

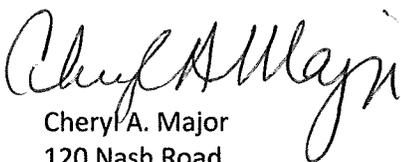
Attorney Pill specifically tries to intimidate Mr. Wolf in his memo by stating "Hopefully Mr. Wolf will not make the mistake of assuming that the Tonelli's and other neighbors lack either the will or the means to pursue litigation. He must realize that he has threatened what for them (like for most families) is their largest single asset – their homes. No one would want to buy or live in their house with the roar of his wood processing machine next door." This statement seems to confirm that the Tonelli's are unwilling to accept anything less than shutting down Mr. Wolf and taking away his livelihood. There seems to be no compromise as the Tonelli's want it their way and their way only. They have not produced one piece of evidence that supports the claim that "no one would want to buy or live in their house with the roar of his wood processing machine next door." That is an opinion not a fact. Have you spoken to everyone in this Community and surrounding communities or everyone in the country to ask if they would want to live next to this processor? The majority of the people in this room would live next to this processor. Attorney Pill states his and the Tonelli's opinion. The Tonelli's don't like the noise. Plain and simple.

Lastly they complain about the dust. They live on a dirt/gravel road. There are many dirt/gravel roads in this Town that create dust. Even the paved roads create dust when the sand has not been cleared after winter. To raise dust as an issue is not reasonable. There is dust on the majority of the roads in this Town.

I would ask the Board to please give consideration to this statement in deciding whether this special permit should be granted.

Thank you for your time.

Respectfully,



Cheryl A. Major
120 Nash Road
Cummington, MA 01026

Charlene F. Madison, PhD

85 Nash Road
Cummington, MA 01026
713.899.7449
cfmcassidy@me.com

April 18, 2019

**Town of Cummington
Zoning Board of Appeals**

Re: Wolf Special Permit Application for Stage Road Property

I am submitting this letter to the Zoning Board of Appeals in continued vehement protest to Roger Wolf's application for a Special Permit to operate a firewood processing facility on his property located on Stage Road, identified on assessor's map 16 as lot 6.

As noted in my letter to the Zoning Board of Appeals submitted at the hearing held on April 11, 2019, my residential property located at 85 Nash Road, identified on map 16 as lot 8, is directly adjacent to Mr. Wolf's Stage Road property noted above. In addition to the comments made in my letter of April 11, 2019, I would like to note that many of the remarks made in support of Mr. Wolf's application at the hearing on April 11th, anticipated to be included in the forthcoming minutes of that meeting, were irrelevant in relation to the issue at hand. The issue being whether or not to grant Mr. Wolf a Special Permit to operate a wood processing facility on his Stage Road property in accordance with the Zoning Bylaws of the Town of Cummington, particularly with regard to Section 4 of the Bylaws - Establishment of Districts. Noteworthy in this respect is Section 4-30 - Purpose, Intent and Additional Use and Special Permit Conditions of Districts, which contains provisions contradictory to granting a Special Permit to Mr. Wolf for operation of his facility in a rural residential area (RR).

I urge you to deny granting Mr. Wolf a Special Permit in any form, or under any conditions, for a wood processing facility on his Stage Road property. There are no measures which can be taken to mitigate the noise and disruption produced by Mr. Wolf's facility and inflicted on the neighboring properties.

Respectfully,



Charlene F. Madison, PhD

April 18, 2019

Town of Cummington
Zoning Board of Appeals

Re: Roger Wolf's Special Permit Application

Dear Board,

We want to express our support for Roger Wolf and his application for a Special Permit with the Zoning Board of Appeals. We ask that you grant this Special Permit for Roger Wolf.

Respectfully,

Charlene Baiardi
Name
Michael Clark
Name
Robert Bentley
Name
Roger Wolf
Name
Corinne Sharkey
Name
Lauren Skowronek
Name
Dalton Noel
Name
Alan S. Lewis
Name
Chris DeStasio
Name
Lance White
Name
Tom Noel
Name
Greg Noel
Name
Kim Sumner-White
Name

Name

Name

Name

Westfield, MA
Address
Worcester, MA
Address
Cheshire MA
Address
Yanley MA
Address
Cummington, MA
Address
Cummington, MA
Address
Cummington, MA
Address
42 Citrus Cummington
Address
120 Nash Rd, Cummington
Address

Address
58 Peter Hill Rd Cummington
Address
58 Peter Hill Rd Cummington
Address
123 Horsey Northampton
Address

Address

Address

Address

Sound Source	Decibels
Jet aircraft, 50m away	140
Threshold of pain	130
Threshold of discomfort	120
Chainsaw, 1m distance	110
Disco, 1m from speaker	100
Diesel truck, 10m away	90
Curbside of busy road, 5m away	80
Vacuum cleaner, 1m away	70
Conversational speech, 1m away	60
Average home's room tones	50
Quiet library	40
Quiet bedroom at night	30
Background in TV studio	20
Rustling leaves in the distance	10
Hearing threshold	0

Source: Tontechnil-Rechner

Sound Level by Distance from Source

Distance m	Sound Level Change dB(A)	Distance m	Sound Level Change dB(A)	Distance m	Sound Level Change dB(A)
9	-30	100	-52	317	-62
16	-35	112	-53	355	-63
28	-40	126	-54	398	-64
40	-43	141	-55	447	-65
50	-45	159	-56	502	-66
56	-46	178	-57	563	-67
63	-47	200	-58	632	-68
71	-49	224	-59	709	-69
80	-50	251	-60	795	-70
89	-51	282	-61	892	-71

How to use the table above:

If a wind turbine has a source noise level of 100 dB(A), it will have a noise level of 45 dB(A) 141 m away. [$100 - 55 \text{ dB(A)} = 45 \text{ dB(A)}$].

The sound level decreases by approximately 6 dB(A) [$= 10 \cdot \log_{10}(2)$] every time you double the distance to the source of the sound. The table assumes that sound reflection and absorption (if any) cancel one another out.

Wolf Firewood Processor

Center of Processor to center of House distance 527 Ft

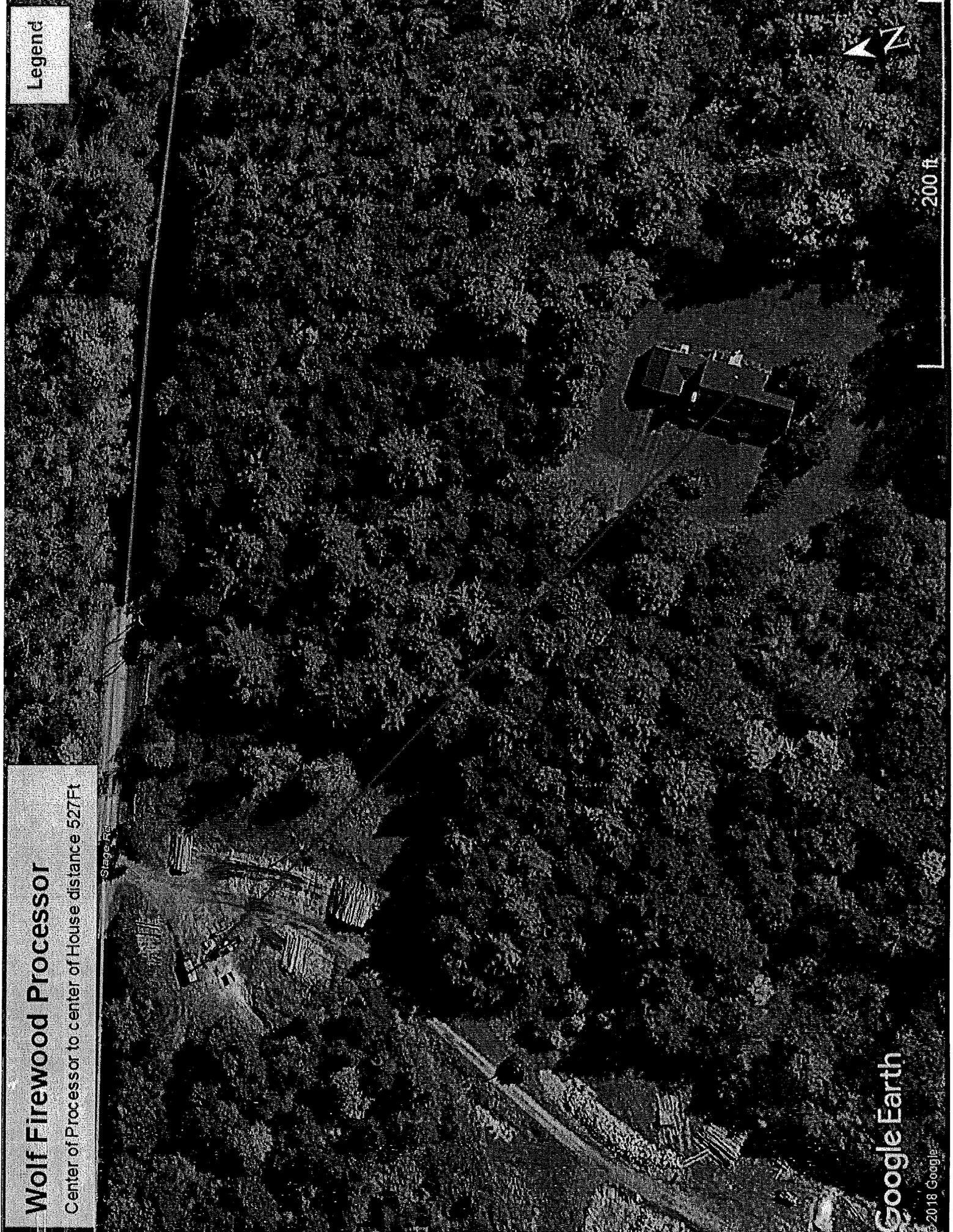
Legend

Stage Rd

Google Earth

© 2018 Google

200 ft



Estimating Sound Levels With the Inverse Square Law

In the real world, the inverse square law is always an idealization because it assumes exactly equal sound propagation in all directions. If there are reflective surfaces in the sound field, then reflected sounds will add to the directed sound and you will get more sound at a field location than the inverse square law predicts. If there are barriers between the source and the point of measurement, you may get less than the inverse square law predicts. Nevertheless, the inverse square law is the logical first estimate of the sound you would get at a distant point in a reasonably open area.

If you measure a sound level $I_1 = 110$ dB

at distance

$d_1 = 1$ m = 3.28083989 ft

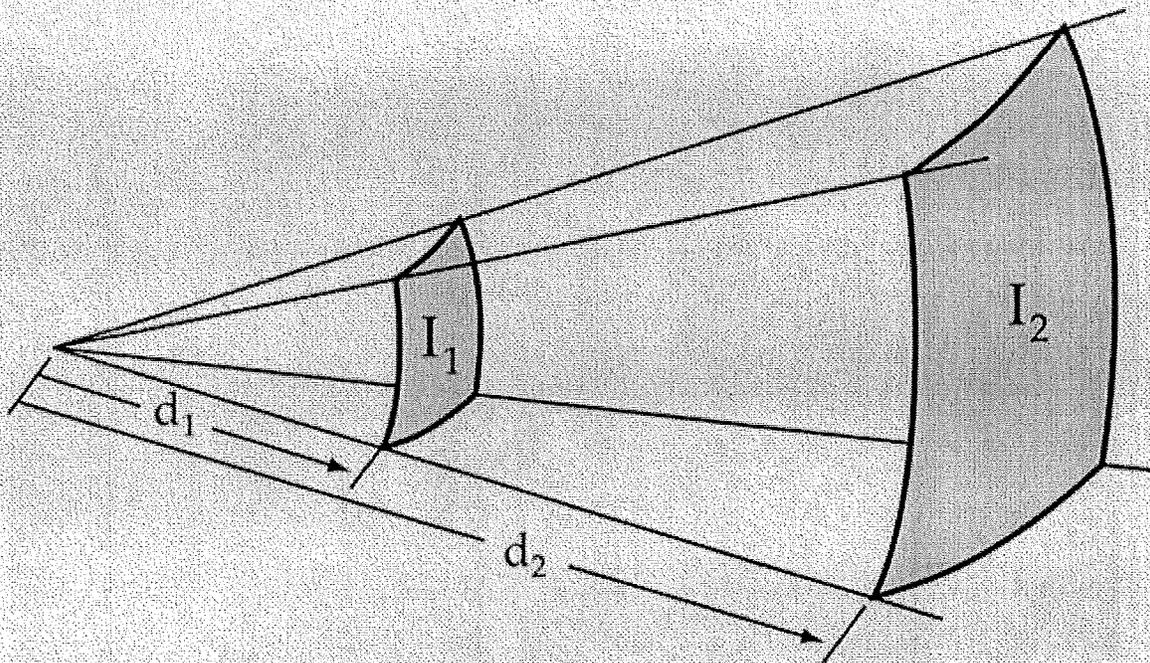
$$\frac{I_2}{I_1} = \left[\frac{d_1}{d_2} \right]^2$$

then at distance

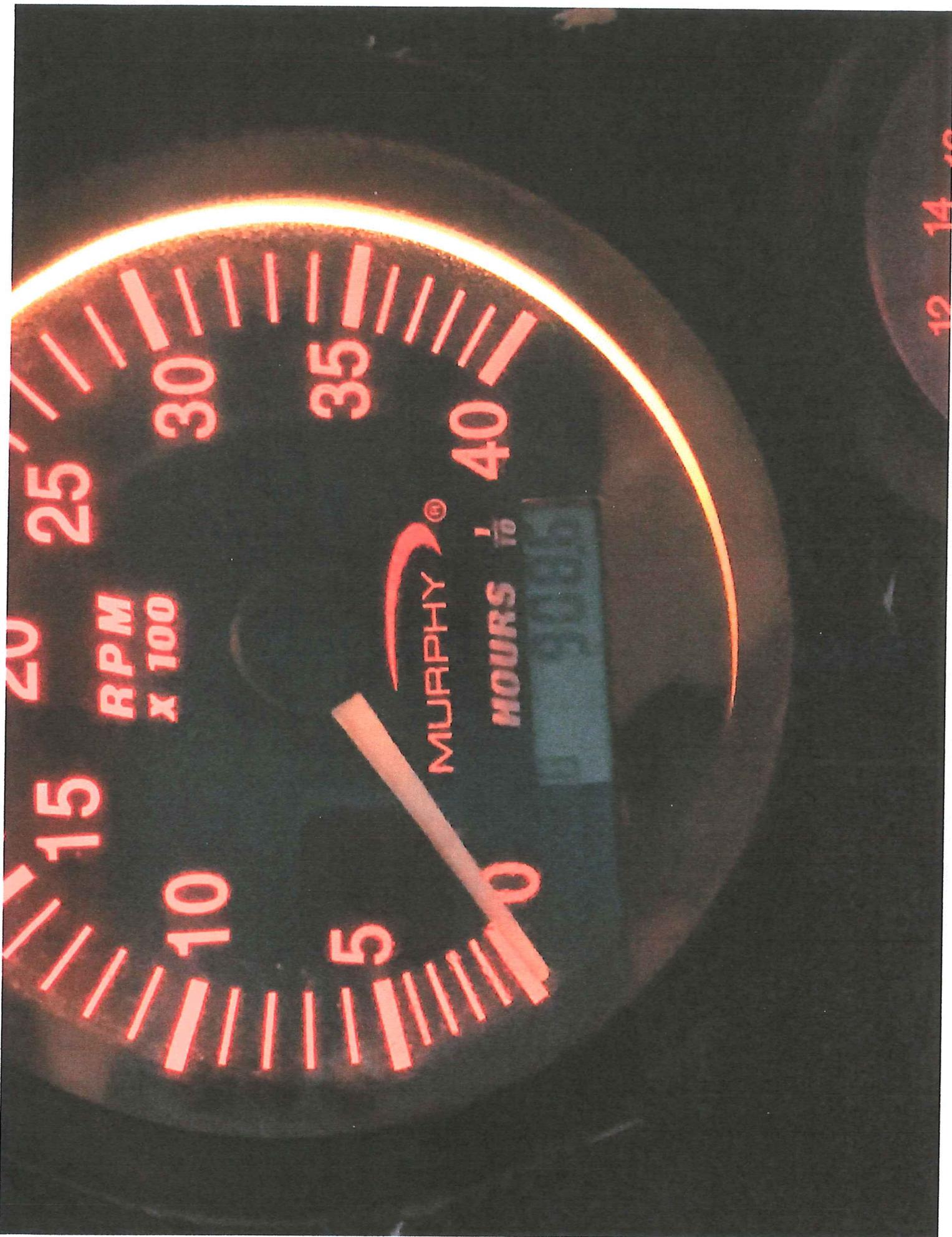
$d_2 = 160.6296$ m = 527 ft

the inverse square law predicts a sound level

$I_2 = 65.8834884$ dB



You can explore numerically to confirm that doubling the distance drops the intensity by about 6 dB and that 10 times the distance drops the intensity by 20 dB.



RPM
X 100

MURPHY®

HOURS

0.0000